

REPORTS
OF
Cases Argued and Determined
IN THE
COURT of CLAIMS
OF THE
STATE OF ILLINOIS

VOLUME 31

Containing cases in which opinions were filed and
orders of dismissal entered, without opinion
for: Fiscal Year 1976—July 1, 1975—June 30, 1976
Fiscal Year 1977—July 1, 1976—June 30, 1977

SPRINGFIELD, ILLINOIS
1979

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PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of the Court of Claims Act, approved July 17, 1945, as amended; Ill.Rev.Stat., 1973, Ch. 37, Sec. 439.18, et seq.

The Illinois Court of Claims hears and determines claims against the State of Illinois based on its laws and administrative regulations, other than claims arising under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act.

The Court also has exclusive jurisdiction to hear and determine all claims against the State: (1) based upon any contract with the State; (2) based on tort by an agency of the State; (3) based on time unjustly served by innocent persons in Illinois Prisons; (4) based on tort by escaped inmates of state controlled institutions; (5) for recovery of funds deposited with the State pursuant to the Motor Vehicle Financial Responsibility Act; and, (6) to compel replacement of a lost or destroyed state warrant.

Programs to compensate the next of kin of law enforcement officers, fireman, and national guardsmen killed in the line of duty are administered by the Court.

In 1973, the General Assembly established a program to alleviate the financial hardship and tragedy suffered by innocent victims of crimes of violence and their families, and to encourage cooperation with law enforcement officials. This program is administered by the Court of Claims under the Crime Victims Compensation Act.

There has been a substantial increase in the number of claims arising solely as the result of the lapsing of an appropriation from which the obligation could have been paid. This is an outgrowth of the July 1, 1969, change from biennial to annual fiscal planning with the consequent lapsing of appropriations on September 30 of each year in accordance with the State Finance Act. Because of both the volume and general similarity of their content, opinions in such cases have not herein been reproduced in full.

Other claims for which opinions have not been reported in full because of volume and general similarity of content include: claims in which orders of dismissal were entered without opinions, some claims arising under the Crime Victims Compensation Act, claims arising under the Law Enforcement Officers and Firemen Compensation Act, and claims for replacement of lost or expired warrants. All claims for which opinions have not been reported are listed according to subject matter along with an explanatory headnote. However, any claim which is of the nature of any of the above categories, but which nonetheless has precedential value, has been reported in full.

OFFICERS OF THE COURT

JOHN B. ROE, *Chief Justice*
Rochelle, Illinois
April 20, 1979—

S. J. HOLDERMAN, *Judge*
Morris, Illinois
March 10, 1970—

LEO F. POCH, *Judge*
Chicago, Illinois
June 22, 1977—

HARRY F. POLOS, *Chief Justice*
Chicago, Illinois
December 6, 1976—April 19, 1979

MAURICE PERLIN, *Chief Justice*
Chicago, Illinois
February 1, 1963—December 6, 1976

LEO J. SPIVACK, *Judge*
Chicago, Illinois
December 6, 1976—June 21, 1977

MARION E. BURKS, *Judge*
Chicago, Illinois
January 13, 1971—December 6, 1976

ALAN J. DIXON
Secretary of State and Ex Officio Clerk of the Court
January 10, 1977—

MICHAEL J. HOWLETT
Secretary of State and Ex Officio Clerk of the Court
January 8, 1973—January 10, 1977

GERALD H. MAYBERRY, *Deputy Clerk and Director*
Springfield, Illinois
June 1, 1978—

ROBERT S. O'SHEA, *Deputy Clerk*
Springfield, Illinois
November 1, 1973—May 31, 1978

IN MEMORIAM

WILMA DAY BOWIE
(1916–1979)

For four decades, Wilma Day Bowie served this Court as Secretary, Administrator and Factotum. To many, she *was* the Illinois Court of Claims.

Her colleagues will remember with gratitude and **ap-**preciation her unfailing devotion to this Court and will retain her memory as an inspiration.

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CASES ARGUED AND DETERMINED
IN THE COURT OF CLAIMS
OF THE STATE OF ILLINOIS

REPORTED OPINIONS

FISCAL YEAR 1976

(July , 1975 through June 30, 1976)

(No. 5268—Claim denied.)

RAY ALM and DONALD ALM, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed October 10, 1968.

ROBERT E. KENNY, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MORTON
L. ZASLAVSKY and **ETTA** COLE, Assistant Attorneys
General, for Respondent.

NEGLIGENCE—*burden of proof*: In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his safety.

SAME—*contributory negligence*. Where evidence indicates a 14-year-old child riding a bicycle violated State law by riding on wrong side of city street, when riding on other side was possible, recovery will be denied Claimant suing for said child.

DOVE, J.

This is a cause of action brought by the Claimants against the Respondent, State of Illinois, for injuries suffered by Claimant, Donald Alm, a minor, while riding his bicycle along a three foot median strip dividing 95th Street in Cook County, Illinois.

The three cyclists had left the Evergreen Shopping Plaza, located on the south side of 95th Street and Western Avenue (2400 West), destined for the Branding Iron Restaurant, located on the north side of 95th Street, approximately one block west of Crawford Avenue (4000 West). Until they reached Crawford Avenue, the boys rode their bicycles on the sidewalk near the south curb of 95th Street. West of Crawford Avenue there are no sidewalks along 95th Street. After crossing Crawford Avenue, the three boys rode along the south curb of 95th Street, facing eastbound traffic, in a single file, with Donald Alm riding first, Terry Ellis riding second, and James Anderson riding third.

At a point approximately one-half block west of Crawford Avenue, when eastbound traffic was light and westbound traffic was stopped for the traffic light at Crawford Avenue, Donald Alm began to cross 95th Street in a northwesterly direction destined for the north curb of 95th Street, with Terry Ellis following. Upon reaching the center strip or median, the westbound traffic was released by the traffic light at Crawford Avenue and, since Donald Alm was unable to cross the westbound lanes of traffic, he continued westbound along the median strip with Terry Ellis following. After riding from **50** to 70 feet along the median strip, Donald Alm's bicycle struck an unmarked hole approximately three inches deep and two feet long, which caused him to be thrown immediately in front of an oncoming eastbound car, which collided with and traveled over the Claimant.

Albert Miller, a police officer of the Village of Oaklawn, arrived at the scene of the accident one or two minutes after the accident happened. He testified that the hole in the median strip was two feet wide, two feet long, and about three inches deep. He further stated

that to his knowledge the hole existed for several weeks prior to the accident. Donald Alm, the Claimant, testified that just prior to the accident his bicycle was traveling at about 10 miles per hour. He further stated that he did not see the hole in the median strip before he struck it.

As a result of said accident, Donald Alm was rendered unconscious, suffered a cerebral concussion, and multiple contusions and abrasions of the body, severe fracture of one tooth and loosening of two teeth, and severe transverse fracture of left hip and pelvis just below the greater trochanter, requiring open reduction and insertion of four Knowles pins. Claimant was placed in a full body cast until September 4, 1965, at which time he was discharged from the hospital. Claimant was readmitted to the hospital on June 5, 1966, for seven days for removal of the Knowles pins.

On July 1, 1966, Dr. John F. Gleason examined Donald Alm, and found him to have a limp caused by shortening of the left leg, narrowing of the left thigh and calf, loss of knee flexion, loss of hip flexion, abduction and internal rotation, and a 10 1/2 by 1/4-inch scar on his left thigh.

Medical expenses incurred by Raymond Alm on behalf of Donald Alm amounted to \$3,506.89, and the estimated cost of future dental treatment will amount to \$225.00.

Claimant contends that the Respondent was negligent in permitting and allowing the hole in question to remain in the median strip, and that such negligence was the proximate cause of the injuries to Donald Alm.

The law in the State of Illinois is clear that, in order for a Claimant in a tort action to recover damages against the State of Illinois, said Claimant must prove

that the State of Illinois was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care and caution for his own safety. *McNary us. State of Illinois*, 22 *Ill.Ct.Cl.* 328, 334; *Bloom us. State of Illinois*, 22 *Ill.Ct.Cl.* 582, 585.

The State of Illinois is not an absolute insurer of every accident that occurs on its public highways. *Gray, Et Al., us. State of Illinois*, 21 *Ill.Ct.Cl.* 521; *Riggins us. State of Illinois*, 21 *Ill.Ct.Cl.* 434; *Terracino us. State of Illinois*, 21 *Ill.Ct.Cl.* 177.

The first question to be determined is whether the Claimant, Donald Alm, a minor, was, at the time of the accident in question, in the exercise of due care and caution for his own safety.

In the case of *Fahrney us. O'Donnell*, 107 *Ill.App.* 608, the Court held as follows:

A bicycle is a vehicle subject to the rules of law governing other vehicles using the public highway, and its rider is required to use the same degree of care to avoid the accident **as** the driver of any other vehicle.

Ill.Rev.Stat., Ch. 95 1/2, 0121, provides as follows:

Every person riding a bicycle or an animal or driving any animal drawing a vehicle upon a roadway shall be subject to the provisions of this act applicable to the driver of a vehicle, except those provisions of this act which by their nature can have no application.

Ill.Rev.Stat., Ch. 95 1/2, §156, provides as follows:

Whenever any highway has been divided into two roadways by leaving an intervening space or by a physical barrier or a clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand roadway, and no vehicle shall be driven over, across or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section, or space or any crossover or intersection established by public authority.

It appears from the evidence in this case that the Claimant, Donald Alm, drove his bicycle on the left-hand roadway of 95th Street for approximately one-half block before crossing the left-hand roadway to the me-

dian strip. When Claimant was unable to proceed across the north half or right-hand roadway of 95th Street because of westbound traffic, he proceeded west on his bicycle along and over the median strip to the point of the accident. *Ill.Rev.Stat., Ch. 95 1/2, 0156*, above set forth prohibits both the driving of a vehicle on the left-hand roadway and the driving over or upon the median strip.

It is the Illinois rule of law that the violation of an ordinance or statute such as *Ill.Rev.Stat., Ch. 95 1/2, 0156*, is prima facie evidence of negligence. *Miller us. Burch, 254 Ill.App. 387.*

With regard to contributory negligence on the part of a minor, Illinois law requires a minor over the age of seven years to exercise that degree of care which a reasonably careful person of the same age, capacity, intelligence and experience would have exercised under the same or similar circumstances. *Wolf us. Budzyn, 305 Ill.App. 603; Hartnett u. Boston Store, 265 Ill. 331*. The evidence in this case indicates no reason or condition justifying Claimant's violation **by** driving his bicycle on the left-hand roadway, and then along the median strip dividing 95th Street. It appears to the Court that the Claimant had several alternatives to avoid violation of the statute. Claimant could have crossed to the north curb of 95th Street. Instead Claimant chose to proceed along the left-hand roadway in violation of the statute. When Claimant reached the median strip and saw that he could not proceed to the north curb of 95th Street because of the westbound traffic, Claimant could have stopped his bicycle and waited for traffic to clear. Instead Claimant continued to ride his bicycle along the narrow median strip to the point of the accident.

In the case of *McAbee us. State of Illinois, 24 Ill.Ct.Cl. 374*, the Court held that Claimant, who was

riding a bicycle on a clear day on the pavement with no obstructions to bar visibility, was guilty of contributory negligence in not seeing a hole in the street where the Claimant had testified: "Actually, I didn't see it, not before I hit it."

The accident in question occurred during the daylight hours and the hole in the median strip should have been readily visible to the Claimant riding his bicycle. Had the Claimant been reasonably alert and observant, he should have seen the hole and been able to avoid the accident.

It must be concluded from the evidence in this case that the Claimant, Donald Alm, was negligent in the management and control of his bicycle. The Court is of the opinion that, even though Donald Alm was a minor, fourteen years of age at the time of the accident, he failed to exercise that degree of care which a reasonably careful person of the same age, capacity, and experience would have exercised under similar circumstances; and, therefore, was not, as a matter of law, in the exercise of due care and caution for his own safety.

For the above reasons, it is the opinion of this Court that the Claimant, Donald Alm, was guilty of contributory negligence, and that his contributory negligence bars the Claimants from any recovery in this action. Therefore, Claimants' claim must be denied.

(No. 5589—Claimants awarded \$25,000.00.)

CHARLES and HAROLD EICHEN, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 7, 1975.

JAMES R. POTTER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER and DOUGLAS G. OLSON, Assistant Attorneys General, for Respondent.

NEGLIGENCE— *duty of State to third person by acts of wards. The Respondent was negligent in placing an emotionally disturbed child with dangerous and destructive tendencies in an unstructured child care institution, when such child escapes and causes damage to the property of third persons.*

BURKS, J.

This claim is for damages to property, a sawmill in Macoupin County near Carlinville, owned and operated by the Claimants, Harold and Charles Eichen. The complaint alleges that, as a result of a fire set on October 7, **1968**, the sawmill, including a storage building, logs, lumber, tools and other material were destroyed, total damage being in the amount of \$25,000. The fire was allegedly set by Ora Hash, a ward of the Respondent, who escaped custody.

Ora Hash, at age **15**, became a ward of the Department of Children and Family Services by order of the Circuit Court of Peoria County, entered on May 28, **1968**; and Herschel L. Allen, Chief of the Division of Child Welfare, Department of Children and Family Services, was appointed his legal guardian with power and responsibility to place and provide for the care and supervision of the ward.

Prior to becoming a ward of the State, Ora Hash had been living in a relative's home under the supervision of the Circuit Court of Peoria County. He and another boy had been picked up for breaking and entering, and the Court removed him to the Gift Avenue Detention Home in Peoria.

Ora Hash came from a difficult home situation. Both of his parents died, and he was accepted by an uncle who was very permissive in his parental responsibility. He moved often—from Kentucky to Tennessee, to

Florida, and back to Kentucky. Ora Hash was never adequately supervised, a fact which contributed to his emotional instability. He went to live with an aunt who was unable to control or supervise him and was returned to his uncle. Ora later went to live with another aunt and uncle in Glasford, Illinois.

While in Glasford, Ora Hash and another boy ransacked the Glasford grade school and committed serious vandalism: spraying paint, breaking furniture, windows, and generally tearing up the school. These boys also broke into the Glasford Lumber Yard, stole a number of items, and tore up the place. Thereupon, the Court removed him to the Gift Avenue Detention Home.

After becoming a ward of the State, Ora Hash remained in the Gift Avenue Detention Home for about a month until a boarding home could be found. At the Detention Home Ora was difficult to handle. He would threaten to do things, according to the record, but there is no explanation of the type of things he threatened to do in this particular home. They did not want him to remain.

From the Gift Avenue Detention Home, Ora Hash went to the Horton Foster Home in Tremont, where they found Ora was a very negative influence on other teenage boys. He smoked incessantly. There were further threats reported with no explanation as to what those threats were. Once again, this home would not keep Ora, and he was sent back again on an emergency basis to be placed at the Gift Avenue Detention Home. He was then placed in the Raymond Hanby Foster Home in Oak Hill. At both the Horton and Hanby Homes, Ora showed a tendency to run away, and he would make more threats when throwing one of his temper tantrums, which were frequent.

An example of the type of threats Ora would make

was finally given in a belated departmental inter-office memorandum, written two months after Ora had caused Claimant's fire loss. It stated that Ora formerly had a part-time job for a few days on a farm. When told that he might not be paid because of the poor quality of his work, Ora replied that, if he wasn't paid, "he might burn down the barn." At another time he told the foster parents that "during the night he might get up and knock them in the head."

The Department sought another new home for Ora Hash. On October 1, 1968, he was accepted as "an emergency-type placement" at Peaceful Valley Youth Ranch at Carlinville. This was the fourth institution for Ora in five months as a ward of the State.

The complete history of Ora Hash was not known to the Director of Peaceful Valley Ranch until after Ora was admitted "because of the dire need of the Department to place him as soon as possible." The director was Mr. Larry F. Renetzky. Mr. Renetzky, whose educational background includes a master's degree in social work, had been a lay minister prior to joining the Department of Children and Family Services, where he was supervisor of a district office. He had helped Reverend Blackburn develop this home for boys. Mr. Renetzky had administrative and supervisory responsibility over the entire staff at Peaceful Valley.

Peaceful Valley Ranch is a private child placement home licensed by the Department of Children & Family Services, is sponsored by WORK, Inc., a not-for-profit corporation, and the Ranch charges a monthly fee for its services. The Ranch is not a closed institution. There are no fences or other restraints to prevent boys from leaving the premises, nor can the Ranch accept a boy that would exhibit a pathology requiring a real structured and closed environment. The boys attend school in Car-

linville, just like other children of that community, and it was from school that Ora Hash "escaped" on October 7, 1968, to burn down Claimants' sawmill.

In accepting the placement of Ora Hash at Peaceful Valley, Mr. Renetzky had agreed to do a diagnostic workup for the Department to determine whether Ora was the type that they could handle at the Youth Ranch or whether he should be placed elsewhere.

The Department had provided a brief report regarding Ora's mode of conduct, and Mr. Renetzky agreed that it did indicate possible destructive behavior of some sort. He also thought that a psychological and psychiatric workup would also be in order, and this was requested. However, he was told that he would have to go through the Mental Health Center; that there was a long waiting list, and that due to funds being frozen by the State at this particular point, the Department of Mental Health could not provide the psychological and psychiatric evaluation.

A few days after Ora Hash arrived at Peaceful Valley, Ora picked up a hatchet and threatened to kill another boy. "It nearly scared this boy to death," Mr. Renetzky said. Ora also threatened the house father, stating that he would "burn Peaceful Valley down, and would kill everybody in it." Mr. Renetzky attempted to reach the local district office of the Department of Children and Family Services to request an immediate replacement of Ora Hash. Unfortunately, this was on a weekend. Mr. Renetzky also tried to contact the Peoria office and was unable to do so.

On the following Monday, Ora Hash did not stay in school. That morning he set fire to the Eichen Brothers Lumber Mill. The fire completely destroyed the lumber mill and the forest surrounding the lumber mill. Ora Hash also set fire to a barn housing farm machinery.

Later in the afternoon, he came in and admitted setting fire to the lumber mill and also the barn. Ora's admission was made to Mr. Renetzky and the Macoupin County Sheriff.

Mr. Renetzky told the Department of Children and Family Services that Ora was so emotionally disturbed, and in such dire need of treatment, that he should be housed in Peoria State Hospital or confined temporarily in a jail. When the Department's Mr. Durward Guth was removing Ora from Peaceful Valley Ranch to Zeller Zone Center in Peoria, Ora explained to Mr. Guth just how he started the fire that destroyed Claimants' property. Ora was then confined to the Peoria State Hospital where a psychiatric analysis showed, among other things, that Ora was a pyromaniac.

Mr. Renetzky who previously worked for the Department of Children and Family Services for six years testified that if he had been provided with detailed background information concerning Ora's destructive propensities, he would have exercised more caution and supervision in light of his problems.

Claimants support their claim for damages on more than one theory of liability. First, Claimants contend that the legislature has recognized absolute liability, independent of common law negligence, for damage done by an escaped inmate who is institutionalized by departments or agencies of this State. Claimants cite the following statute:

AN ACT concerning damages caused by escaped inmates of charitable, penal, reformatory or other institutions over which the State has control.
Ill.Rev.Stat., Ch. 23, §4041.

4041. Claims. Whenever a claim is filed with the Department of Mental Health, the Department of Children and Family Services, or the Department of Corrections for damages resulting from personal injuries or damages to property, or both, or for damages resulting from property being stolen, heretofore or hereafter caused by an inmate who has escaped from a charitable, penal, reformatory or other institutions over which the State has control

while he was at liberty after his escape, the Department. . . shall conduct an investigation to determine the cause, nature and extent of the damages and if it be found after investigation that the damage was caused by one who had been an inmate of such institution and had escaped, the Department may recommend to the Court of Claims that an award be made to the injured party and the Court of Claims shall have the power to hear and determine such claims.

With considerable logic, Claimants compare the above statute with the law of strict tort liability applied to storage of explosives or the recently developed area of products liability. Claimants argue, "if a business or a government stores, sells or houses persons or things which are in themselves inherently dangerous, the business or government should bear the loss of damage to persons or property rather than the person victimized."

Respondent questions the applicability of the above statute on the grounds that Ora Hash was not an "inmate and did not "escape" from an "institution". We do not find much support for this contention in our dictionary. We do, however, accept Respondent's contention that the above quoted statute does not impose absolute liability, but rather the test is one of fault.

See—American States Insurance Company and Union Automobile Indemnity Association v. State, 23 Ill.Ct.Cl. 47; Huff v. State of Illinois, 22 Ill.Ct.Cl. 36.

Using the test of fault, Claimants contend that Respondent was negligent in placing an emotionally disturbed child with dangerous and destructive tendencies in an unstructured licensed child care institution. We believe the facts in this particular case support Claimants' contention as to Respondent's negligence.

This Court fully appreciates the difficult task of carrying out the policy and purpose stated in the *Juvenile Court Act, Ill.Rev.Stat. Ch. 37, §701-2*. It obligates the Respondent to balance the sometimes conflicting interests of a child and the safety of the community. We have often resolved doubtful cases in favor of the

decision maker as in *American States, et al.* In the case at bar, Respondent suggests that its course of action might have been different if it had the benefit of 20-20 hindsight vision. Hindsight, of course, does often magnify acts of negligence that might go unnoticed if they produce no disaster.

In this case we find that Respondent was negligent in failing to exercise a reasonable degree of foresight in the light of their ward's past record. Respondent failed to ascertain at the time it became guardian of Ora Hash whether or not he exhibited pyromaniac or other tendencies of a violent nature which would have required that he be confined in a structured environment, be given the mental care his condition demands, and the public safety protected.

The conduct of Ora Hash in the first three institutions in which he was placed after becoming a ward of the State should have warned the Respondent that Ora was not qualified for placement at Peaceful Valley Ranch, and that such placement involved a foreseeable risk to life and property. The police report of Ora's larceny and vandalism before he became a ward of the State was part of his record. His numerous difficulties, threats of violence, and total inability to adjust at the several foster homes before going to Peaceful Valley were known to the State. Failure to make a full disclosure of all the facts to the director at Peaceful Valley was a further act of negligence.

We do not accept Respondent's general proposition that a full disclosure of a ward's case history to a foster parent should not be required "if to do so would seriously mitigate against the placement of the child or a third person's acceptance of responsibility for the child's welfare." It seems to us that failure to disclose essential facts would amount to fraud in the inducement.

The case at bar can be distinguished from the New York case cited by the Respondent, *Seavy v. State of New York*, 216 N.E.2d 613, although the facts are strikingly similar:

Claimants, who owned a dairy farm, filed a claim against the State for the destruction of barn and contents by fire set by mentally retarded young man, on ground that the Claimants accepted custody of the young man as a farm worker because of alleged misrepresentation of the character of the young man by the State's agent, and on ground that the State was negligent in transferring the young man to the Rome State School, which is operated by the State Department of Mental Hygiene for the care and training of mentally retarded individuals.

The New York Court of Claims, William G. Easton, J., entered a decision dismissing the claim after a trial, and the owners of the dairy farm appealed.

The Appellate Division, Goldman, J., entered an order which, by a divided court, affirmed the judgment entered on the decision of the Court of Claims, and held that the burning of the barn was unforeseeable from the young man's past history of quick temper and disagreeable behavior and one incident of suffering burns after having spilled cleaning fluid on his body, and that the State was not liable though details of entire past history of the young man had not been disclosed to the Claimants. Williams, P.M., and Bastow, J., dissented.

We believe the case at bar differs from the above New York case in the foreseeability of the risk involved. To the extent that it does not, and on the issue of full disclosure, we would agree with the dissenters in the New York Appellate Division.

We can agree with that court's finding that the burning of a barn was unforeseeable based on their young man's past history of "quick temper and disagreeable behavior." That would be a mild description of the record of Ora Hash. Ora had committed a violent crime just before he became a ward of the State; was found to be uncontrollable by four institutions; had made repeated threats *to* commit murder and arson; and, after the last threat was carried out, was found to be a pyromaniac. This determination was much too long delayed.

We must assume that the State's failure to disclose full details of the ward's entire past history was not a decisive factor in the New York case quoted above. In any event, we believe the rule is properly stated by the California Supreme Court in *Johnson v. State*, **69 Cal.2d 782; 447 P.2d 352**. As that rule would be applied here, the State owed a duty to fully inform Mr. Renetzky of all matters that its agents knew or should have known that might cause Ora Hash to endanger the persons or property of the residents of Macoupin County.

The facts in this particular case do establish that the State failed to exercise a reasonable degree of care in the light of its ward's admitted propensities for violence which existed before the fact which caused Claimants' loss. This is not to say that the State is an insurer against any loss that might be caused by a ward or inmate any more than the parole board should be held to guarantee that a parolee will commit no further crimes. See our recent opinion in *Flaim v. State*, *Ill.Ct.Cl. No. 5442, filed June 11, 1975*.

On the question of damages, the only testimony before this court is that of the Claimants and their appraisers. Claimant Harold K. Eichen testified that, as a result of the fire, the brothers had to pay \$600.00 to the fire department to come to the scene of the fire, and lost income of **\$7,825.00** as a direct result of their sawmill being burned by Ora Hash. Mr. Eichen also testified that he did receive insurance proceeds of \$400.00. J. Glen Meyers who had operated a sawmill himself for some 20 years testified that the buildings that were destroyed had a fair market value of \$5,000.00; that the "sawmill" had a fair market value of \$4,000.00; the edger was valued at \$1,500.00; saw blade at **\$2,292.00**; and logs and lumber in inventory at **\$594.00**. Isqdore Bertinetti testified that the pulleys,

belts, motor and tools that were destroyed had a minimum value of **\$4,312.00**.

The appraisers testified that the figures given were either minimum replacement values or the fair market value of the various items that were destroyed in the fire. The total of the income lost, equipment, tools and buildings that were destroyed in the fire is **\$26,123.00**. This figure, reduced by the **\$400.00** received by the Eichens from their insurance carrier, reduces the total loss to the amount of **\$25,723.00**. Respondent does not contest the accuracy of this figure as fairly representing Claimants' actual pecuniary loss.

At the time of Claimants' loss, the statutory limit on awards for damages in tort cases was **\$25,000**. Since the operation of the sawmill was a partnership, Harold Eichen and Charles Eichen are each entitled to be awarded one-half of said compensable loss.

Claimants are hereby awarded damages for their property loss as follows: Twelve Thousand Five Hundred Dollars (**\$12,500**) to each Claimant.

To Charles Eichen the sum of **\$12,500**.

To Harold Eichen the sum of **\$12,500**.

(No. 5602—Claim denied.)

JUD J. REIDY, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed September 11, 1975.

WILLIAM R. DUNN and **WILL GIERACH**, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER** and **MARTIN A. SOLL**, Assistant Attorneys General, for Respondent.

NEGLIGENCE — *proof of prior notice.* The duty of the State to motorists using public highways is to exercise ordinary care to keep them reasonably safe for use. Where evidence failed to indicate prior knowledge of flooding by State officials, liability does not arise.

CONTRIBUTORY NEGLIGENCE — *burden of proof.* A Claimant must sustain the burden of proving himself free from contributory negligence in order to recover for negligence by the State.

BURKS, J.

Claimant in this action seeks damages for personal injuries he sustained when he drove his car into an accumulation of water on a State highway, lost control of his vehicle, and struck another automobile coming from the opposite direction.

Claimant contends that his accident was caused by negligence of the Respondent in failing to prevent the accumulation of water at the site of the accident by providing adequate drainage, in failing to provide adequate warning of this dangerous condition of the highway by posting signs or barricades, and in failing to detect the existing hazard by adequately patrolling the highway.

Coming home from his work in Aurora at about 5:30 p.m. on January 28, 1968, Claimant was driving alone in his Volkswagen in a northeasterly direction on Illinois Route 171, a mile east of Route 83, in Lemont Township of Cook County.

It was dark. The weather was drizzly and raining all that day. The highway was wet. Claimant was familiar with the stretch of road on which his accident occurred, having driven it at least 30 times, but on his way to work earlier that day he had taken the toll road instead. In the 35 minutes he had been driving on his way home, Claimant noticed puddles of water on the highway, but no large accumulations until he struck the water extending several car lengths across the highway and stated in Claimant's brief to be four inches in depth.

Claimant said he was driving about **45** mph; that his windshield wipers were on; that traffic was medium; that he saw the headlights of an approaching car when he struck the water and lost control of his car. Claimant was on the wrong side of this two lane highway when it smashed into the oncoming automobile driven by Frank Kovalis, Respondent's eyewitness to the accident.

Claimant was not wearing his seat belt, and he suffered a broken leg above the knee. He never got out of his car, and did not know the depth of the water. He was in shock when they brought him to the Community Memorial Hospital in La Grange where he remained for eight days. His medical bills were covered by insurance, but he suffered a substantial loss of wages, damages to his car, and a **14** inch scar on his right leg which is weather-sensitive and curtails some of his normal activities.

After a careful reading of all evidence submitted in this case, the Court is still mystified as to how the accumulation of water appeared on the highway at the time and place of the accident, in the absence of any proof of an extreme downpour of rain at that particular location. All witnesses familiar with area testified that there was no evidence of any prior flooding in that area. The evidence is also clear that the State had no prior actual notice of any accumulation of water, although the State Police patrolled the area twice a day.

The first question before us is whether the State had constructive notice of a dangerous condition on its highway and failed to take appropriate measures within a reasonable time to warn users of the highway of such dangerous condition. *Gray u. State*, 21 Ill.Ct.Cl. 521; *Visco u. State*, 21 Ill.Ct.Cl. 480; *Dockry u. State*, 18 Ill.Ct.Cl. 177.

The second question, of course, will be whether the Claimant was free from any negligence that contributed to his accident. *Maki u. Frelk*, 40 Ill.2d 193; *Schuck & Maryland Casualty u. State*, 25 Ill.Ct.Cl. 209.

For answers to the above questions, we will first summarize the testimony of the three witnesses called to testify on behalf of the Claimant other than the Claimant himself and his wife.

Claimant first called Howard Farthing, a State Trooper who was on duty at the time of the accident and who received a call from State Police Headquarters about 20 minutes after the accident. When he arrived at the scene there were three police cars there ahead of him, and there were two wrecked cars, Claimant's Volkswagen and a Plymouth partially in the ditch.

Claimant was sitting in his Volkswagen when Officer Farthing arrived. The people in the other car had already been taken to the hospital. Officer Farthing, by walking in the water on the highway, determined its depth to be four inches and said it was several car lengths covering both sides of the highway.

Officer Farthing radioed headquarters and requested barricades. He then issued a traffic citation to the Claimant for "improper lane usage". Though he said the center line was not visible under the water.

Although he was patrolling a different area that day, Officer Farthing had patrolled the accident site numerous times before; said this particular stretch of road is patrolled at least once every eight or nine hours; that no reports had come in prior to or after he came on duty at 4:00 p.m. as to any flooding condition of the road in this area. He said the road was level in the vicinity of the accident, with no low or high spots, and no curves. He was never aware of any accumulation of water on

the road in this vicinity at any prior time. He said the road was in good repair and the shoulder was grassy.

Claimant then called George Zarins, an employee of the Illinois Division of Highway Communications Center whose duties were to receive and log radio transmissions. He testified that on the night of the accident he received a radio report from the State Police at 6:35 p.m. that barricades were required or requested at the scene of the accident. Zarins also disclosed that he checked the radio logs for an hour or two before the 6:35 p.m. report and determined that no earlier requests for barricades were received, but he didn't check the records for any report beyond that.

Highway Field Engineer Raymond Kristopaitis who next testified on behalf of the Claimant stated that he too examined the State Highway Communications Log for January 29, 1968, and failed to see any actual notification prior to the time of the accident of flooded road conditions or requests for barricades.

Respondent's witness, State Trooper Earl Enders, stated that he was very familiar with the site of this accident, since he patrolled and resided in the area for the past ten years. He confirmed that the police patrolled the area in every eight hour shift, and further stated that, based upon his ten year experience within the area, he had no knowledge of any prior flooding conditions at the scene of this accident. He concluded that the drainage in the area was good. Claimant's witness, Ray Kristopaitis, the Field Engineer for the Division of Highways, had earlier testified that this section of the highway was in good shape, didn't need any repairs, and that no repairs in the roadway were made following the accident.

Frank Kovalis, whose auto was struck by Claimant in the collision, testified that he drove past the accident

site at least once a week and, therefore, was very familiar with the highway. He, too, stated that he never noticed any water accumulation on the road prior to the night of the accident.

We find the evidence to be overwhelming that the State had no knowledge of the flooded highway prior to the accident, and no knowledge of any prior road flooding at or near the scene of the accident.

Claimant argues that circumstantial evidence should support our finding of constructive notice, viz., in the absence of proof of a heavy rainfall, an accumulation of water four inches deep and 80 feet long could not have accumulated suddenly, but must have built up over a period of time, and that, since the State Police patrolled the area twice a day, the condition should have been discovered and reported. The logic of this argument overlooks the possibility, or even the probability, that the water accumulated within a 12 hour period since the area was last patrolled.

Claimant testified that there was a “medium” amount of traffic on this highway at the time of his accident, and the evidence shows that there had been no other accident in this vicinity. Apparently all other drivers noticed the water, reduced their speed, and kept their cars under control while passing through it. This includes the only eyewitness to the accident other than the Claimant himself. Frank Kovalis, whose car was struck by the Claimant, had no difficulty in keeping his Plymouth under control and staying in his own traffic lane. None of the other motorists who drove through the water apparently considered it sufficiently hazardous to report it to the police.

The Secretary of State’s booklet, *Rules of the Road*, states at page 28:

“Regardless of the limits which may be posted, the law also provides that no person shall drive at a speed which is greater than is reasonable and proper with regard to traffic conditions and the use of the highway, or which endangers the safety of any person or property.”

The evidence in this case draws us inexorably to the conclusion that the probable cause of Claimant’s accident was his failure to use ordinary care for his own safety on this particular occasion.

Claimant’s headlights should have picked up a body of water 80 feet long before he entered it. The highway was straight and level for a long distance before he approached the water. There was nothing but rain to obstruct Claimant’s vision. He entered the water at a speed of **45** miles per hour, well below the speed limit, but a speed that was apparently unsafe and excessive under the conditions prevailing.

Claimant admitted that “he lost control **of** his car” when he hit the water. In *Schuck & Maryland Casualty Co. v. State of Illinois*, 25 Ill.Ct.Cl. 209, this Court denied Claimants’ recovery based upon an accident allegedly due to the failure **of** the State to maintain a frontage road. Noting that “it is the duty of a driver to keep his vehicle under control,” we found, as we do in the case at bar, that the Claimant “has shown no hazardous or dangerous condition of which the State had either actual or constructive notice. There have apparently been no accidents or complaints in regard to this portion of the highway. . . .”

The duty of the State to motorists using public highways is to exercise ordinary care to keep them reasonably safe for such use. *Rains v. State of Illinois*, 25 Ill.Ct.Cl. 330. In the instant cause we find that the State has not failed in this duty, since it had no notice, actual or constructive, of any flooding of the highway. Moreover, we find that Claimant failed to prove that he was free from contributory negligence at the time of the

accident. Any finding of liability against the Respondent under these circumstances would be tantamount to declaring the State to be an insurer against all accidents which occur on its highways. That would be contrary to our rulings followed in many previous claims of this kind. *Beenes u. State of Illinois*, 21 Ill.Ct.Cl. 83; *Hook u. State of Illinois*, 22 Ill.Ct.Cl. 629; *Gray u. State of Illinois*, 21 Ill.Ct.Cl. 521; *Link u. State of Illinois* 24 Ill.Ct.Cl. 69; *Vesci v. State of Illinois* 24 Ill.Ct.Cl. 23.

This claim must be and is hereby denied.

(No. 5671—Claim Affirmed.)

MARGARET MANOS, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed March 8, 1976.

ROBERT LISCO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

HIGHWAYS—duty of State. The State of Illinois is not guilty of negligence unless it has reasonable notice of a dangerous condition and fails to warn the motoring public.

SAME—negligence. Evidence indicated that Respondent was fully aware that highway where Claimant's deceased was injured was rough, with numerous chuck holes, when cold patches were used to try to eliminate these chuck holes.

HOLDERMAN, J.

This matter comes before the Court after oral argument on the Petition for Rehearing and the Claimant's Answer to Respondent's Petition for Rehearing.

The Court, having heard oral arguments in said cause and having examined the Respondent's Petition for Rehearing, together with Claimant's Answer to said petition, does find:

That the highway where the accident occurred is one that is very heavily travelled, and from the evidence and the record, it appears to be clear that it is a very rough highway with numerous chuck holes, some of them of considerable size. It is apparent that Respondent was fully acquainted with this situation and that cold patches were used to try to eliminate chuck holes and a dangerous situation.

The testimony of the service station operator in the immediate vicinity is uncontradicted when he stated that this condition had existed for a long period of time.

This Court has repeatedly held that the State of Illinois is not an insurer against all accidents happening on its highways.

This Court has also held that it is incumbent upon the State of Illinois to warn the travelling public of dangerous conditions as they exist.

It is the opinion of this Court that the State did not warn the travelling public in this particular instance as it could have done by warning signs, rough pavement signs, or other signs that would alert the motorist of the fact that there was a dangerous condition existing.

It is incumbent upon the State to reasonably maintain the roads and highways in a safe condition and to warn the travelling public if dangerous conditions exist. This doctrine was clearly set forth in the case of *Scudiero vs. State of Ill.*, 26 Ill.Ct.Cl. 457 where the following statements were made by the Court:

Although Claimants' witnesses testified that they saw no warning signs, Respondent's witnesses stated that there were rough pavement signs every two miles. This hardly seems adequate when there was no sign at the spot, which all parties stated was one of the worst. Respondent could have exercised reasonable care in maintaining the area by doing the patching job, which took 45 minutes instead of the 'patch holes' job, which was known not to last in heavy traffic, which occurred daily. Respondent's witness, Mr. Galus, also testified that it would have been possible to put up barricades and

flashers if an area is impossible to repair. The condition in question had lasted at least three days to two weeks before the accident. Respondent, through its daily inspections, knew or should have known of the dangerous condition of the road.

Although the State is not an insurer of all who travel on its highways, it does have an obligation to keep its highways in a reasonably safe condition for motorists traveling over them. If the highways are in a dangerously defective condition, the State is negligent if it does not notify the public of such condition.

It is the opinion of this Court that the State failed in its duty to properly warn the public, and that the death of Harry Manos logically followed such neglect. The decision heretofore rendered in this matter is confirmed and the petition for rehearing is denied.

(No. 5730—Claimant awarded \$5,000.00.)

RUTH M. NAYH, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed August 13, 1975.

STANLEY WERDELL and CHARLES DEAN CONNER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*duty of State to third person by acts of inmates.* The State is required to exercise reasonable care in restraining and controlling dangerous insane persons committed to its custody, so that they will not have the opportunity to inflict a foreseeable injury upon others.

BURKS, J.

This claim is brought by the Claimant to recover damages for an assault and battery upon her person by one Carl Kowack, a patient at the John J. Madden Zone Center, a mental institution under the jurisdiction of the State.

On June 4, 1969, the Claimant, a registered nurse for 27 years and actively so engaged, was employed by the Veterans Administration Hospital at Hines, where

she had been employed for **19** years, following her service in the U. S. Army Nurse Corps. At the time of her injury she was a staff nurse at Hines, worked the night shift, and lived on the grounds.

Adjacent to the Veterans Administration Hospital is a mental institution, the John J. Madden Zone Center, separated from the Veterans Administration installation by a concrete fence approximately six feet high running around the mental institution. A person can enter the Veterans Administration grounds through a gate in the fence. The nurses' quarters, where Claimant lived, are about two blocks away from the fence.

At about **6:30** p.m., on June **4, 1969**, the Claimant left the nurses' quarters and entered her car parked across **the** road. Carl Kowack, later identified as a patient escaped from the State mental institution, got into the car on the side opposite the driver's side as Claimant was sitting in the car and demanded that she give him her keys.

When she refused to give him her keys, he brutally assaulted the Claimant, beat her severely about the face, as graphically shown in Claimant's photo exhibits, and as related by Claimant in the record.

By stipulation, the parties agreed that Claimant's assailant, Carl Kowack, was committed by court order to Chicago State Hospital, a State institution, on May **22, 1969**. Kowack was transferred to John J. Madden Zone Center on May **28, 1969**, to receive more intensive care and better therapy since the staff-to-patient ratio at the Zone Center is one-to-one, whereas, at Chicago State Hospital it is more like one staff member for **25** or **30** patients, according to Dr. Ernesto Lopez, a psychiatrist on the staff of the John J. Madden Zone Center in charge of Kowack. He was preliminarily diagnosed as

suffering from an acute anxiety reaction with a schizoid personality .

Two days later, Kowack escaped from the hospital and was found wandering on the grounds of the Hines Hospital immediately adjacent to the State institution. He was placed in restraints that evening. Kowack was released from restraints on the following day on the order of Dr. Ernesto Lopez, a licensed psychiatrist, in the exercise of his medical judgment. Dr. Lopez explained that the patient appeared calm, and that a patient cannot be restrained indefinitely "since a patient suffering from acute anxiety reaction would view restraints as a possible form of punishment."

Four days later Kowack escaped through a window at approximately 6:15 p.m. and attacked the Claimant.

He was returned to the Madden Zone Center by guards from Hines Veterans Hospital and was thereupon placed in restraints. He was kept in these restraints the following two days.

Kowack had not previously been hospitalized in a State institution, and there was no evidence in the record as to any previous acts of violence. However, his court commitment as "a person in need of mental treatment" contemplates the following definition of that term as used in the Mental Health Code, *Ill. Rev. Stat., Ch. 95* §1-11:

... a person who "reasonably expected at the time the determination is being made or within a reasonable time thereafter to intentionally or unintentionally physically injure himself or other persons..."

After further conversations with Dr. Lopez, Respondent stipulated that Carl Kowack, suffering from acute anxiety reaction with schizoid personality, recognized that he was unable to control his impulses, and that he might be dangerous.

In *Eichen u. State*, *Ill.Ct.Cl.* 5589, August 8, 1975, we held that absolute liability, in the absence of negligence, is not imposed on the State by statute known as:

AN ACT concerning damages caused by escaped inmates of charitable, penal, reformatory or other institutions over which the State has control. *Ill.Rev.Stat.*, Ch. 23, § 4041.

The record before us is amply sufficient to support a finding that the State was negligent in failing to prevent the second escape of Carl Kowack from the John J. Madden Zone Center. The negligence of the State in failing to guard the walls and gate adequately and to otherwise supervise the movements of Carl Kowack within the grounds of the Madden Zone Center is particularly glaring if we consider Dr. Lopez's testimony that the "staff to patient ratio at the Zone Center is one-to-one."

Respondent concedes that Claimant's assailant had escaped four days before he attacked the Claimant, and that the attending physician knew he "might be dangerous." It is not essential that the precise consequences which actually resulted therefrom should have been foreseen. *I.L.P. Negligence § 105*. As we said in *Paulus u. State*, 24 *Ill.Ct.Cl.* 215, 216, "We believe that, under the circumstances, the State was negligent in not providing better security for a potential risk."

There is no evidence of any contributory negligence on the part of the Claimant. As we said in *Callback u. State*, 22 *Ill.Ct.Cl.* 722, 733:

Claimant had no reason to believe that she would be attacked by a wandering insane man in the early hours of the morning or at any hour. She had no reason to believe that such a man would be allowed to roam the grounds unattended and alone. She was not, in our judgment, guilty of contributory negligence. The facts establish that she was exercising due care and caution for her own safety, and did nothing to incur the injury or incite the assault.

Since Claimant was an employee of the Veterans Administration Hospital, she incurred no financial loss

for her hospital and medical expenses. However, she sustained some noticeable permanent injuries to her face. Examining Claimant's eight color photo exhibits showing the condition of Claimant's face after the beating, it is remarkable that the permanency of her injuries was not more severe.

Dr. Robert Dirmish, who treated Claimant the night she was assaulted and examined her again on the day of the hearing, testified that, as a result of the beating, she sustained minimal permanent changes in the soft tissue adjacent to her right jaw, causing the right side of her face to be less full than the left, and causing thereby a small but noticeable facial asymmetry.

The Claimant, Ruth M. Nayh, is hereby awarded damages for her personal injuries in the sum of Five Thousand Dollars (**\$5,000.00**).

(No. 5748—Claimants Awarded \$40,000.00.)

JAMES BILODEAU, Et Al., Claimants, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed June 30, 1976.

CRAIG A. RIDINGS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

HIGHWAYS—*duty of* State. The State is guilty of negligence when, knowing it is reasonably foreseeable that an accident will occur at **an** intersection in the absence of a stop sign, a stop sign is not erected.

EVIDENCE—contributory negligence. Any contributory negligence of a driver is not attributable to passengers of an automobile. Where evidence indicates a driver is unfamiliar with an intersection, a warning sign did not state the distance to an intersection, and that the driver of another car was negligent, contributory negligence does not exist.

PERLIN, C. J.

This is an action for wrongful death and personal injuries in which Claimants allege that the State was negligent in maintaining a stop sign at the northwest corner of the intersection of U.S. Alternate **30** and Meridith Road in Kane County, Illinois. Claimants contend that the negligence of the State was the proximate cause of an automobile collision at the intersection in which James Bilodeau, Michael Bilodeau and Gerald Bilodeau were injured, and Natilie Bilodeau sustained injuries which resulted in her death.

U.S. Alternate **30** runs in an easterly and westerly direction. Meridith Road runs in a northerly and southerly direction. The speed limits on both roads in the vicinity of their intersection were 65 miles per hour. Alternate **30** was the preferred road, and its intersection with Meridith Road was protected by stop signs which halted north and southbound traffic on Meridith Road. Approximately **838** feet north of Alternate **30** on Meridith Road there was a warning sign indicating a stop sign ahead. The warning sign did not indicate the distance to the stop sign.

At approximately 10:30 a.m. on January 28, **1968**, Illinois State Trooper Ray D. Winstead was driving southbound on Meridith Road. As he approached the intersection with Meridith Road he noted the warning sign indicating a stop sign ahead. When he reached the intersection he noted that the stop sign on the northwest corner, which halted southbound traffic on Meridith Road, was lying on the ground. Winstead testified that although he was looking for the sign he drove almost into the intersection before he saw it lying at the side of the road.

Winstead immediately radioed a report of the downed sign to his headquarters. The Illinois State

Police radio log sheet for January 28, 1968 reflects that this call was received at 10:40 a.m. Winstead then attempted to reset the sign but was unable to do so. After a few minutes he left the sign in the same position as he had found it and left the intersection unattended to resume his patrol.

Approximately two hours later, Claimants were proceeding south on Meridith Road. Natilie Bilodeau, then 22 years of age, was driving. Her husband James, their three year old son Michael, and her brother-in-law, Gerald Bilodeau, were passengers in the car. They were driving to Aurora to visit James Bilodeau's sister and were unfamiliar with the area as they had never before made the trip.

Richard A. Moecher and Jean Ann Moecher were the sole eyewitnesses to the accident. Called as Claimants' witnesses, they said that the Bilodeau car proceeded through the intersection without stopping. At the same time a car which was northbound on Meridith Road ignored the stop sign for northbound traffic and, without slowing, entered the intersection and turned west onto Alternate 30 directly in front of the Bilodeau car. The northbound car, driven by one Hugh Spears and carrying five passengers, collided head on with the Bilodeau car at approximately the middle of the intersection.¹

Trooper Winstead arrived at the accident site shortly after the collision. He said that the downed stop

1. All of the occupants of the Spears car were killed. In *Merchants National Bank of Aurora, et al. v. State, No. 5600, filed January 9, 1973, amended opinion filed October 26, 1973*, a companion case to the instant action, the administrators of the estates of the passengers of the Spears car brought suit against the State for the wrongful deaths of those individuals. Neither Mr. nor Mrs. Moecher, the sole eyewitnesses to the collision, were called to testify in that action. The case was tried on the theory that the Spears car was eastbound on Alternate 30 when it struck the Bilodeau car, apparently on the basis of the locations of the Spears and Bilodeau cars when they came to rest after the collision.

sign on the northeast corner of the intersection was in the same position as he had left it about two hours earlier.

In order to recover for the wrongful death of Natilie Bilodeau, and for the injuries to the other occupants of the Bilodeau car, Claimants bear the burden of proving by a preponderance of the evidence that Respondent was negligent in maintaining the intersection of Alternate 30 and Meridith Road; that the negligence of Respondent was the proximate cause of their damages; and that they were themselves free of contributory negligence.

The issue of whether the State was negligent in maintaining the intersection was decided by this Court in *Merchants National Bank of Aurora, et al. v. State, No. 5600 filed January 9, 1973, amended opinion filed October 26, 1973*. There this Court held that the conduct of Trooper Winstead, in leaving the intersection unattended after he had actual notice of the downed stop sign, constituted negligence.

As we said in our amended opinion in *Merchants National Bank*,

In a nutshell, the Respondent, after receiving actual knowledge of said dangerous condition, literally walked away from the dangerous condition and thus allowed the hazardous condition to remain, which eventually caused the death of claimants' decedents.

Our earlier holding in *Merchants National Bank, supra*, that Respondent was negligent in not taking some action to protect the intersection once it had actual knowledge of the downed stop sign, is determinative of that issue in this action.

We next turn to the issue of proximate cause. Respondent argues that the negligence of Hugh Spears who ran a standing stop sign and drove into the path of Claimants' car was the proximate cause of the accident. Respondent contends that it could not have reasonably foreseen Spears' negligence.

It is clear that there may be more than one proximate cause of an occurrence. The act of one party may create a dangerous condition which may permit an accident to occur given the negligence of another party. If the negligence of the second party could have reasonably been foreseen by the party who created the dangerous condition, then that party may be held legally responsible for the resultant damages. As stated in *Johnson v. City of East Moline*, 338 Ill.App. 220, affirmed 405 Ill. 460:

What constitutes proximate cause has been defined in numerous decisions, and there is practically no difference of opinion as to what the rule is. **The injury must be the natural and probable result of the negligent act or omission** and be of such character as an ordinarily prudent person ought to have foreseen as likely to occur as a result of the negligence, although it is not essential that the person charged with negligence should have foreseen the precise injury which resulted from his act. (citing cases) The intervention of independent concurrent or intervening forces will not break the causal connection if the intervention of such forces was itself probable or foreseeable.

The question thus becomes whether Respondent could have reasonably foreseen that an accident would occur in the absence of a stop sign. Again, our earlier decision in *Merchants National Bank, supra*, is dispositive. We there held that it was reasonably foreseeable that an accident would occur at the intersection in the absence of the stop sign, and we, therefore, hold that the negligence of Respondent was a proximate cause of this accident.

The final issue is whether Claimants have established freedom from contributory negligence. James Bilodeau, Michael Bilodeau and Gerald Bilodeau were passengers in the car, and the record establishes that they were in the exercise of due care for their own safety. Further, even if we were to find that Natalie Bilodeau, the driver of the car in which they were riding was negligent, her negligence would not be imputable to her passengers. *Summers v. Summers*, 40 Ill.2d 338; *Tyler v. State*, 26 Ill.Ct.Cl. 231.

Respondent argues, however, that an award to the Administrator of the Estate of Natilie Bilodeau is barred because Natilie Bilodeau was not free of contributory negligence. It appears from the record that Natilie Bilodeau was unfamiliar with the intersection of Alternate 30 and Meridith Road and thus could not have been anticipating a stop sign at that location. Although she passed a sign approximately 800 feet north of the intersection indicating a stop sign ahead, that sign did not state the distance to the stop sign. Further, eyewitness testimony established that the Spears car turned directly in front of her vehicle after her car was already in the intersection. Under all the circumstances, we find that she was exercising reasonable caution for her own safety at the time of this occurrence.

James Bilodeau suffered a broken right shoulder, a compound fracture of his right arm, a fractured pelvis, several fractured ribs, and numerous cuts and bruises as a result of the accident. He was hospitalized for four weeks and wore a cast for about eight weeks thereafter. His out of pocket expenses were **\$8219.18**, including **\$4777.74** in lost wages and **\$2418.09** in hospital bills. He has already received the sum of **\$19,963.95** from the Estate of Hugh Spears, which is required by Section 26 of the Court of Claims Act to be set off from his recovery in this forum.

Gerald Bilodeau suffered a broken left arm, three fractured ribs, a cerebral concussion, burns on his right leg, and numerous cuts and bruises. He has suffered permanent, but not disfiguring, scarring. His out of pocket expenses were **\$2127.62**, including **\$1066.62** in hospital bills and **\$656.00** in lost wages. He has received the sum of **\$4444.87** from the Estate of Hugh Spears.

Michael Bilodeau was three years old at the time of this accident. He has a permanent disfiguring scar

across his entire forehead which may be helped by plastic surgery. He has received the sum of **\$6925.68** from the Estate of Hugh Spears.

Natilie Bilodeau was 22 years old at the time of her death. She was married to James Bilodeau and was the mother of Michael Bilodeau. She was employed at the time of her death earning **\$1.85** per hour. Her death represents a loss to her husband and son in excess of the maximum award which this Court may make. Her estate was paid the sum of **\$8,665.50** from the Estate of Hugh Spears.

After setting off the amounts received by Claimants from the Estate of Hugh Spears, as required by Section **26** of the Court of Claims Act, we hereby make the following awards:

To James Bilodeau, the sum of **\$5,036.05**.

To Gerald Bilodeau, the sum of **\$15,555.13**.

To James Bilodeau, as Guardian of the Estate and Person of Michael Bilodeau, a minor, the sum of **\$3,074.32**.

To James Bilodeau, Administrator of the Estate of Natilie Bilodeau, Deceased, the sum of **\$16,334.50**.

(No. 5759 — Claim denied.)

**WILLETT ELMORE, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed March 29, 1976.

C. ROBERT YELLIN , Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

HIGHWAYS—*duty of* State. The State must keep roads under its jurisdiction and control in reasonably safe condition.

SAME—*negligence*. The State is not liable for injuries resulting from the natural accumulation of snow on a road, or for injury caused by traffic wearing on the snow causing ruts and ridges on the road surface.

SAME—*contributory negligence*. Where Claimant was fully aware of existence of a rut and an oncoming car, yet drove directly into the rut without even attempting to slow her car, Claimant did not exercise due caution.

PERLIN, C. J.

This is an action to recover for personal injury and property damage sustained by Claimant in a head-on automobile collision on January 2, 1969. The accident occurred on County Line Road in Highland Park, Illinois, a two lane, undivided roadway. The parties have agreed that the road was under the jurisdiction and control of Respondent at the time of the accident.

Claimant asserts that her injuries were proximately caused by the failure of Respondent to properly maintain the road. Specifically, she alleges that her automobile struck a large hole in the road, which caused it to skid into the lane of oncoming traffic. Respondent contends that the road was properly maintained, and that Claimant's own negligence was the proximate cause of her injuries.

At about 7:55 a.m. on January 2, 1969, Claimant was driving in an easterly direction on County Line Road with two passengers in her car. Traffic was light, and visibility was good. Claimant was very familiar with the road, having driven it daily for several years prior to the accident.

There had been a heavy snowfall for several days prior to January 2, 1969. Two days before the accident State employees had plowed County Line Road. The plowing resulted in snow being pushed to the sides and shoulders of the road, making the shoulders impassable to traffic. There was a snowfall after the road was

plowed, and automobile traffic wore ruts in the accumulated ice and snow in both the eastbound and westbound lanes.

Claimant testified that County Line Road was slippery on the day of the accident, and that she was travelling about 10 miles per hour because of the road conditions. She said that at about the 500 block of County Line Road her car struck a large deep hole which caused it to slide into the lane of oncoming westbound traffic and collide with an automobile driven by one James Levy.

Claimant said that she saw the Levy car when she was about two blocks west of the accident site. She said that she did not apply her brakes between the time she first observed the car and the collision because, "we were going so slow."

Claimant described the hole she said she struck as being four feet wide, three feet long, and about six inches deep. She said that it was located in the approximate center of the street. Claimant further testified that she "knew [the hole] was there all the time," as she had seen it on many previous occasions. She said she had first seen it about two months before the accident, and that it had been her practice to drive around the hole. She said she was unable to do so on the day of the accident because the shoulders of the road were impassable because of the accumulation of snow.

Claimant was hospitalized for six days as a result of the accident. She suffered a broken nose and a whiplash injury, and claims a loss of earnings as well as property damage to her car.

Sargent John Dunn, a Highland Park police officer, arrived at the scene of the accident shortly after the occurrence. He described County Line Road as being in

“very bad condition with deep ruts in the hard packed snow which covered the street. He also said that the road was narrowed to 18 to 20 feet because snow had been plowed to the sides and shoulders.

Dunn frequently drove past the accident site during the course of his duties. He acknowledged having received complaints from Highland Park residents about the condition of the road but had no personal knowledge as to whether the complaints were transmitted to the State of Illinois. Asked whether there were any holes in the road at the accident site other than the ruts in the packed snow, Dunn said, “I believe there were some because I believe there was some construction going on at the time of the accident.” However, Dunn was unable to recall whether the construction began before or after the accident and did not recall observing any construction warning signs at the accident site.

James Levy, the driver of the vehicle that collided with Claimant’s car, was the sole witness to testify on behalf of Respondent. Levy was a Highland Park resident who drove past the accident site daily on his way to and from work. He said that County Line Road was a little icy and rutty on the day of the accident, and that it was somewhat narrower than usual because plowed snow had been pushed to the sides of the road.

Levy first saw Claimant’s car when it was about one-half block from his car. He estimated that Claimant was traveling 10 to 15 miles per hour. Levy said he was travelling about 5 miles per hour as he approached Claimant’s vehicle, and that he would not have been in control of his car had he been driving any faster. Levy said that Claimant’s car began sliding into his lane when it was one to two car lengths from his car.

Levy did not recall seeing any chuck holes or pot holes in County Line Road at the accident site.

In *Emm v. State*, 25 Ill.Ct.Cl. 213(1965), this Court held that the State must keep roads under its jurisdiction and control in reasonably safe condition. In order for Claimant to prevail in this action she must prove by a preponderance of the evidence that the State breached this duty; that she was free of contributory negligence; and that the negligence of Respondent proximately caused her injuries.

We must first determine whether Claimant has proven Respondent's negligent failure to maintain County Line Road. Claimant testified to the existence of a large hole in the street which she alleges caused her car to slide into the path of the Levy vehicle. However, both James Levy and Officer Dunn, unbiased witnesses with no interest in this cause, testified that they did not recall seeing a hole in the pavement at the accident site. Both had ample opportunity to examine the road since both travelled it daily, and James Levy was particularly certain that he did not observe a defect in the pavement.

We think it highly improbable that both Levy and Dunn would overlook a hole as large as that which Claimant testified existed in County Line Road. Given the fact that all witnesses agree that County Line Road was studded with ruts worn by traffic in packed snow and ice, we think it most probable that Claimant's car struck a large rut created by the wear of traffic on the snow packed road.

It is well established that the State is not liable for injuries resulting from the natural accumulation of snow on a road or for injury caused by traffic wearing on the snow causing ruts and ridges on the road surface. *Strapelli u. City of Chicago*, 371 Ill. 72; *Casper v. City of Chicago*, 320 Ill. App. 269,271.

We, therefore, hold that Claimant has not established a breach of duty on the part of Respondent.¹

Furthermore, we think the record establishes that Claimant was not in the exercise of due care for her own safety at the time of the accident. Claimant testified that she was driving 10 miles per hour when she saw the Levy car but did not slow down until the collision. Yet Claimant knew that the road was slippery, that the shoulders of the road were impassable and, most significantly, that there was a large rut at the accident site. This is very clear from Claimant's own testimony:

Q. Did you at any time that morning see this rut before the collision?

A. Yes, because I know (sic) it was there all the time.

Q. Approximately how far from the rut were you when you became aware of it that morning?

A. Well, I couldn't say where I was because I knew the rut was there.

* * *

Q. You had driven over this hole before, had you not?

A. Right.

Q. What happened on previous occasions when you drove over it?

A. Well, sometimes I would go 'around it. Either there wouldn't be as much snow, and you would get over on the shoulder.

Q. Had you ever actually driven into it prior to January 2, 1969?

A. No.

1. It should be noted that even if we were to find that Claimant had proven the existence of a hole in the pavement, Claimant has presented no evidence to show that Respondent had either actual or constructive notice of the defect. In the absence of such proof, the State would not be liable for injuries caused by the defect. See, *Visco v. State*, 21 Ill.Ct.Cl. 480; *Pyle v. State*, Ill.Ct.Cl., No. 5343.

Q. You were aware of the rut that was there before you hit it?

A. Yes.

We think that these facts conclusively show that Claimant did not exercise reasonable caution. She was fully aware of the existence of the alleged rut and saw the oncoming Levy car, yet drove directly into the rut without even attempting to slow her car. Reasonable prudence would have dictated that she at least reduce her speed as she knew that she could not drive around the rut because of the accumulation of snow on the shoulder of the road. Her failure to take this elemental precaution, knowing the condition of the road, certainly was at least a contributing cause of the accident.

In *Vanda v. State*, 25 Ill.Ct.Cl. 213, 218, this Court said, "A party has no right to knowingly expose himself

(No. 5830—Claim denied.)

LEWIS and ENOLA M. DINGLEDINE, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed January 16, 1976.

L. H. FLESNER, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER and OWEN D. LIERMAN, Assistant Attorneys General, for Respondent.

NEGLIGENCE—duty of state. The State can be held liable for negligence in performance of a contract by placing a destructive child, or a child who reasonably should be anticipated to be a destructive child, in a foster home.

SAME—evidence. Where neither a duty nor breach of a duty is alleged or proven, there can be no recovery.

HOLDERMAN, J.

Claimants, Lewis Dingledine and Enola M. Dingledine, his wife, seek recovery from the State for damages allegedly suffered as a result of actions of a ward of the State who had been placed in their charge.

The Claimants entered into an agreement with the State of Illinois, Department of Children and Family Services and, as a result of the agreement, accepted one Paul Reeves, a **14** year old boy, who entered their home on March **17, 1969**. He remained there until July 30, **1969**.

It is the contention of the Claimants that shortly after the placement of the foster child in their home, he became destructive and they requested the State to remove him. There is considerable conflict as to whether the Claimants clearly demanded that Paul Reeves be removed from their home prior to July, **1969**, but it is undisputed that they complained about him to the Department as early as May **14, 1969**. The later part of May, **1969**, they submitted a tentative list of the damage he had done.

Mrs. Mahoney, the case worker in charge of this particular individual, testified that she did not hear from the Dingledines until May or June to the effect that they were having trouble with the child and that July **14, 1969**, was the first date on which she received a request to remove him.

Before Claimants can recover, they must prove that the State was negligent in its duty toward the Claimants, and that Claimants were free from contributory negligence.

On the question of contributory negligence, it does appear that after July **1, 1969**, there was no record of any damage done by the foster child. In response to a

question as to why no damage was done between July 1 and the time he was removed, Mrs. Dingleline responded, "We were just keeping doggone tight watch on him," which would indicate that when they did keep a tight watch on this individual, he did not commit any damage.

The record shows that the Claimants have a history of keeping foster children in their home, so they are undoubtedly familiar with the problems that can arise. On the whole, however, I do not believe that Claimants were guilty of contributory negligence.

This appears to be the first time that a claim of this nature has been presented to the Court of Claims. This claim is based upon a tort action arising out of a foster home placement agreement. It would seem that the State of Illinois, which now permits itself to be sued for tort, can be held liable for negligence in the performance of a contract and that, therefore, Claimants' complaint sets forth a recognizable cause of action. Therefore, it appears that the law is not in dispute in this matter, but rather a question of fact.

The record is devoid of any facts showing that the foster child had been a destructive child nor is there any evidence that indicates that the State could or should have anticipated that he was a destructive child. That being the case, the State did not act negligently in placing him in the Dingleline home. To hold otherwise, in the absence of proof of notice, would be treating the issue as one of *res ipsa loquitur*.

It is the State's contention that there was not a "real" request to remove this child until July **14, 1969**. He was removed a few days later, but during this period of time, according to the record, there was no further damage done.

It is probably true that the State could have acted more promptly in removing this child, but the State contends that it had difficulty in placing these children, and it does take time to find a new home for them.

There does not seem to be any previous Court of Claims opinions that have a bearing on this case. The authorities cited by Claimants and Respondent are directed to the underlying legal issue of duty as related to tort cases arising out of contracts.

There can be no recovery in tort unless a duty and breach of that duty is alleged and proven.

A. Duty. I. L. P. Negligence, Section 22, states as follows:

In order that there may be negligence or actionable negligence there must be a legal duty to exercise care in favor of the person injured or to protect such person from injury, and a breach, or failure to perform, such duty. Where there is no duty or breach thereof there can be no negligence.

It is not sufficient that there has been a breach of some duty or obligation unless such duty or obligation was one owing to the person injured. Where the duty of care and caution has no existence toward a particular person there may be no such thing as 'negligence' in the legal sense of the term.

CONTRACTUAL DUTY. One who has been guilty of negligence in the performance of a contract may be liable for the resulting damages sustained by the person with whom he contracted. Where the only relationship between the parties is contractual, *the liability of one to the other for negligence must arise out of some positive duty which the law imposes because of the relationship or because of the negligent manner in which some act which the contract provides for is done*, and the mere breach of an executory contract, where there is no general duty, is not the basis for a charge of negligence.

In order that liability based on the negligent performance of a contract may attach, some privity or relationship should exist between the person injured and the one sought to be charged, by reason of which the person sought to be charged owes some legal duty to the one suffering the injury.

74 Am. Jur. 2d Tort, Section 23, sets out the law as follows:

A tort is a wrong to another in his rights created by law or existing in consequence of a relation established by contract, but it cannot be based upon the contract itself. In other words, a mere breach of contract cannot be converted into a tort. Indeed, a tort is sometimes defined as a wrong independent of contract, or as a breach of a duty which the law, as distinguished from a mere contract, has imposed. Although such duty may have been imposed because of a contract or because of it and something else combining, when otherwise it would not have created the duty, yet breach of contract may only be treated **as** a tort where the law casts its separate obligation. To **recover**

upon that theory, the plaintiff must show not merely that the defendant assumed an obligation under contract, but that out of that obligation there arose a duty to the plaintiff.

Basically, it can be said that if the cause of complaint is an act of omission or nonfeasance which, without proof of a contract to do what has been left undone, will not give rise to any cause of action, then the action is founded upon contract and not upon tort. To found an action in tort, there must be a breach of duty apart from the nonperformance of a contract. To determine whether an action is *ex contractu* or *ex delicto*, it is necessary to ascertain the source of the duty claimed to have been violated; if this duty is one imposed merely by the contract, then action for the breach thereof is necessarily *ex contractu*. *But if a party sues for breach of duty prescribed by law as an incident of the relation or status which the parties have created by their agreement, the action may be one in tort, even though the breach of duty may also be a violation of the terms of the contract.* And a legal duty the violation of which is a tort may spring from extraneous circumstances not constituting elements of the contract as such, although connected with and dependent on it.

Where a contractual relationship exists between persons and at the same time a duty is imposed by or arises out of the circumstances surrounding or attending the transaction, the breach of the duty is a tort. In such a case, the tortious act, and not a breach of the contract, is the gravamen of the action; the contract is the mere inducement creating the state of things which furnished the occasion for the tort.

It is the opinion of this Court that the Claimants have failed to prove any negligence on the part of the State and an award is hereby denied.

(No. 5910—Claim denied.)

**ROBERT SKINNER, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.**

Opinion filed September 16, 1975.

**MILLER, HICKEY & CLOSE, by HAROLD L. TURNER,
Attorneys for Claimant.**

**WILLIAM J. SCOTT, Attorney General; EDWARD L. S.
ARKEMA, JR., Assistant Attorney General, for Respon-
dent.**

NEGLIGENCE—due care. The State is not an insurer of the condition of highways under its control, but does have a duty to the public to use reasonable care in maintaining roadways.

SAME—burden of proof. The Claimant bears the burden of proving by a preponderance of the evidence that the State is negligent; that the State's negligence proximately caused Claimant's injury; and the Claimant is free of contributory negligence.

SAME—evidence. Where Claimant fails to establish that Respondent had notice of downed stop sign or where Claimant fails to establish that Respondent was negligent in utilizing a sign of standard construction at the intersection where Claimant is injured, recovery will be denied.

PERLIN, C. J.

Claimant Robert Skinner has brought this action to recover for personal injuries and property damage incurred when the car in which he was riding collided with a car being driven by one Gaila Riddle at the intersection of Blackhawk Road and 20th Street in Rockford, Illinois, on October 5, 1969. The gravamen of Skinner's claim is that Respondent negligently failed to properly maintain a stop sign at the intersection.

On October 5, 1969, at approximately 5:00 p.m., Claimant was driving in a westerly direction on Blackhawk Road, an east-west street, near its intersection with 20th Street, a north-south avenue. Gaila Riddle was traveling southbound on 20th Street. The day was clear and the roads were dry. The speed limit on both Blackhawk Road and 20th Street was 65 miles per hour.

The intersection of Blackhawk Road and 20th Street is controlled by stop signs on the southeast and northwest corners of the intersection which stop traffic north and southbound on 20th Street. At the time and date in question the stop sign on the northwest corner, which halted southbound traffic on 20th Street, was not standing. The sign had been uprooted, and was lying on the shoulder of the road.

Gaila Riddle did not stop her car at the intersection and collided with the car being driven by Claimant.

This Court has often held that the State is not an insurer of the safety of all who travel its roads and is

required only to exercise reasonable diligence in maintaining roads under its jurisdiction. See *Weygandt v. State*, 22 Ill.Ct.Cl. 498. Claimant therefore bears the burden of proving by a preponderance of the evidence that Respondent was negligent in maintaining the intersection; that Respondent's negligence proximately caused his injuries; and that he was free of contributory negligence.

It is the Claimant's position that Respondent had both actual and constructive notice that the stop sign was uprooted. Respondent counters that it had neither actual nor constructive notice of the condition of the stop sign. Respondent further asserts that Claimant has failed to prove his freedom from contributory negligence; that it was the negligence of the drivers involved which proximately caused the accident; that Claimant's damages are speculative and uncertain; and that Claimant has failed to allege and prove facts necessary to invoke the jurisdiction of the Court of Claims.

Deputy Sheriffs Steve Holcomb and Ronald E. Betts who arrived at the accident scene shortly after the collision both testified that sometime prior to the accident they had observed the stop sign uprooted. Holcomb said that he and Betts had passed the intersection four or five days prior to the accident, and that he noticed that the stop sign was leaning over. He said he was certain that the sign was not completely uprooted at this time. Betts said that they passed the intersection sometime within seven days prior to the accident, and that the stop sign was completely down on this occasion. Betts confirmed that he and Holcomb reported the condition of the sign to the office of the Sheriff of Winnebago County. Betts further testified that it was the procedure in the Sheriffs office to relay such reports to the agency in charge of the particular road.

Mr. and Mrs. Paul Phillips resided on the northwest corner of Blackhawk Road and 20th Street. They had been on vacation for two weeks prior to the accident and returned to their home in the early morning hours of October 5. Neither could recall whether the sign was standing when they returned home, but at about 11:00 a.m. on October 5, they did notice that the sign was down. They did not report the condition of the sign to authorities.

Mr. Phillips testified that the sign had been uprooted "several times" from April, 1968, to the date of the accident.

Elizabeth Dye also resided near the intersection of Blackhawk Road and 20th Street. She testified that she had observed the downed stop sign earlier in the week, and that in the eight years that she lived in the area the sign had been uprooted a number of times.

Richard Sink, a foreman in the Maintenance Department of the State of Illinois Division of Highways, was called to the accident site to erect a temporary sign after the collision. He inspected the uprooted sign, and testified that the post was intact. He said the lower three feet of the post was covered by a thin layer of dirt which appeared to be moist. He said that to his recollection the weather had been warm and sunny for several days prior to the accident, and that in his opinion the pole had probably not been down longer than 24 hours.

Arley Webster also lived near the intersection in question and was employed at the offices of the General Telephone Company which were located approximately 1000 feet from the downed stop sign. Webster testified that at approximately 4:00 p.m. on Friday, October 3, 1969, he was working outside the General Telephone offices when he noticed that a woman's car had stalled on 20th Street. He testified that he helped the woman

push her car onto the shoulder of the road near the stop sign on the northwest corner of the intersection. Webster said that he specifically recalled that the stop sign was standing at this time, as he had difficulty in maneuvering the woman's car around the sign.

Reconciling all the foregoing testimony as to when the stop sign was standing and when it was down, the Court concludes that while the stop sign had indeed been uprooted from five to seven days prior to October 5, 1969, and that Respondent presumptively had actual notice of this fact, the stop sign had been re-erected sometime prior to 4:00 p.m. on October 3, 1969. This is the most plausible explanation for the testimony of Deputy Sheriffs Betts and Holcomb that the stop sign was down earlier in the week, and the uncontradicted testimony of Arley Webster that the stop sign was standing at 4:00 p.m. on October 3, 1969. Our conclusion is buttressed by the fact that moist dirt covered the lower three feet of the post although the weather had been warm and sunny for several days prior to the accident indicating that the bottom of the post had not been exposed for any great period of time.

It therefore appears that the sign was uprooted sometime between 4:00 p.m. on October 3, 1969, and 11:00 a.m. on October 5, 1969, when Mr. Paul Phillips noticed that the sign was down. The issue thus framed is whether, in these circumstances, the State may be charged with constructive notice of the condition of the sign on October 5, 1969.

Respondent may be charged with constructive notice of a dangerous condition when, from all the circumstances of a case, it is determined that Respondent should have been aware of the existence of the condition in the exercise of reasonable care and diligence. *Joyner v. State*, 22 Ill.Ct.Cl. 213, 217. That is, the dangerous

condition must have existed for such an appreciable length of time that the Respondent can be charged with negligence in not ascertaining and correcting the condition.

In *Hilden v. State, Ill.Ct.Cl. No. 5652, filed May 11, 1971*, we held that a two day long malfunction in a traffic signal was not a sufficiently lengthy period to put the State on notice of the defect. The evidence here shows that this stop sign had been down for a period of less than two days at the time of accident and under our holding in *Hilden*, we must conclude that Respondent cannot be charged with constructive notice of this fact.¹

Claimant urges, however, that the State had notice that the sign was subject to being periodically uprooted and should have instituted a program of regular inspections of the intersection. While the record indicates that this particular stop sign had been uprooted previously, we are still unable to charge the State with constructive notice of its condition on October 5, 1969. The record shows that the stop sign had been repaired sometime between October 1 and October 3, 1969, and was upright and in good condition at 4:00 p.m. on October 3. To charge the State with constructive notice of the condition of the sign on the morning of October 5, under these circumstances, would be tantamount to making the State an insurer of the condition of all traffic signals under its jurisdiction and control.

Finally, Claimant contends that Respondent was negligent in not anchoring the stop sign by extraordinary means after it had been uprooted on prior occasions. Claimant points to the testimony of Mr. and Mrs.

¹More recently, and directly in point, is *Pyle v. State, Ill.Ct.Cl. No. 5343, filed November 10, 1973*, wherein this Court made a thorough analysis of leading authorities on the question of notice in tort claims based on downed stop signs.

Phillips that the sign was down three times between April, **1968**, and October, **1969**, and the statement of Elizabeth Dye that the sign was down "many times" during an eight year period. Claimant further points out that after the accident on October 5, **1969**, the stop sign was anchored with a post twice as large as the old post, and the sign had not been uprooted from the date of the accident to the date of the hearing herein.

Donald R. Love, Supervisor of State Highway Maintenance in Winnebago County, testified for Respondent that the stop sign in question was placed on a pole which measured four inches by four inches on each side. The sign weighed 50 to **60** pounds, and was the standard stop sign as used throughout the country. While the intersection had been troublesome, Respondent did not act unreasonably in utilizing a standard stop sign.

Claimant has failed to establish that Respondent had actual notice of the condition of the downed stop sign on October **5**, **1969**, and considering all the facts of this case, we find that the stop sign had not been down for a sufficient period to charge Respondent with constructive notice of the condition. Claimant has further failed to establish that Respondent was negligent in utilizing a sign of standard construction at the intersection in question.

Claimant's claim is accordingly denied.

(No. 5949—Motion to Dismiss Granted.)

DUDLEY PORTER, Administrator of the Estate of BENJAMIN R.
PORTER, Deceased, and DUDLEY PORTER, Individually,
Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Order filed July 24, 1975.

NEGLIGENCE—*wrongful* death. A member of the Illinois National Guard while on a federal mission is not an agent of the State, and thus the Court has no jurisdiction over the subject matter of a wrongful death claim arising from said Guardsman's actions.

BURKS, J.

This matter is now before us on Respondent's motion filed May 5, 1975 for dismissal of this action on the grounds that this Court does not have jurisdiction of the subject matter of this claim. The Claimant having filed no objection to said motion, and the Court being fully advised in the premises, finds as follows:

The alleged wrongful death of Claimant's decedent was allegedly caused by the driver of a military vehicle who we find was not an agent of the State of Illinois at the time of the fatal accident. The departmental report in the record pursuant to our Rule 14, states in ¶1:

At the time of the accident, the driver of the military vehicle, Sergeant James R. Hough, 349-38-7247, was a member of Company B, 682d Engineer Battalion, Illinois Army National Guard. He was on an authorized mission and performing Federally funded annual training required by §503, Title 32, U.S. Code. Claim for property damage and death arising from this accident would therefore be cognizable under §715, Title 32, U.S. Code [commonly referred to as the National Guard Claims Act].

This Court has previously commented at length on the employment status of the members of the Illinois National Guard when they are on a federal mission and not engaged in the performance of a State function or in State service.

In a case almost identical to the claim before us, we held that the alleged tortfeasor, an Illinois National Guardsman on a federal mission, was not an agent of the State at the time of the fatal accident, and that the claim based upon the guardsman's negligence was not within the jurisdiction of this Court, *McRaven, Adm. u. State, Ill.Ct.Cl. No. 5586 filed July 14, 1972*.

Respondent's motion to dismiss this claim is hereby granted.

(No. 6005 & 6175—Claim denied.)

DAVID BROCKMAN, individually, TWYLA BROCKMAN and BRENT BROCKMAN, Minors, by DAVID BROCKMAN, their father and next friend, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11, 1975.

PEFFERLE, MADDOX & GRAMLICH, by JOSEPH W. MADDOX, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS OLSON, Assistant Attorney General, for Respondent.

NEGLIGENCE—due care. The State is not an insurer of the condition of highways under its control but does have a duty to the public to use reasonable care in maintaining roadways.

SAME—burden of proof. The Claimant bears the burden of proving by a preponderance of the evidence that the State is negligent; that the State's negligence proximately caused Claimant's injury; and that Claimant is free of contributory negligence.

SAME—evidence. Where design of a highway is in conformity with standards in the industry at the time it was constructed; and where the State employed two persons to check drains along county roads during working day, the State is not guilty of negligent design and maintenance of a highway.

PERLIN, C. J.

These consolidated cases arise out of an automobile accident that occurred on November **15, 1968**, which resulted in the death of Evie Brockman and injuries to her son, David Brockman, and his children, Twyla and Brent Brockman.

In cause number **6005**, David Brockman is suing in both his individual capacity and as father and next friend of Twyla and Brent Brockman and seeks **\$25,000** in damages for personal injuries and property damage sustained by them. Cause number **6175** is a wrongful death action in which David Brockman, as administrator of the estate of Evie Brockman, seeks **\$1,500** for burial expenses incurred for Evie Brockman.

On November **15, 1968**, David Brockman was driving a **1965** Chevrolet sport van truck in a southwesterly

direction on the U.S. Route **66** by-pass in Springfield, Illinois. The accident occurred at about 9:30 p.m. at approximately 100 feet northeast of a C & IM Railroad overpass that intersected the road.

It had been raining steadily all day, and Brockman's vehicle struck an accumulation of water on the highway. The van went out of control and travelled across the highway into the median strip, sideswiped a tree, and came to rest against the cement abutment of the railway overpass.

Evie Brockman was killed in the accident. Brent Brockman suffered a broken right arm and Twyla Brockman suffered a broken collarbone. David Brockman received head injuries which he alleged caused severe headaches for several years and prevented him from working.

Claimants assert that Respondent was negligent in designing the highway and the highway's drainage system in such a manner as to permit water to accumulate on the road and in failing to install and maintain warning devices to advise drivers that a dangerous condition existed on the highway. The State contends that the highway and drain were not negligently designed or maintained.

At the accident site the U.S. Route **66** by-pass is a four lane highway divided by a 33-foot wide median with a posted speed limit of **45** miles per hour. The road and drainage facilities were build in 1937. The drainage facilities consist of a 12 foot by **5.5** foot concrete box culvert running diagonally east and west under the pavement directly north of the C & IM Railroad crossing. Twelve inch storm sewers are located on either curb of the southbound lanes just north of the box culvert and drain into the culvert. About 90 feet north of the box culvert there is an additional 12-inch storm sewer on the east curb of the southbound lanes.

David Brockman testified that it had been raining constantly on November **15, 1968**. At the time of the accident he was travelling about **40** miles per hour, and his car lights and windshield wipers were operating. He described the visibility as “good,” but said that as he approached the accident site, he was not able to see the water on the pavement. He said he didn’t remember anything about how the accident occurred from the time his van struck the water.

Harold B. Edwards, an Illinois State Trooper who investigated the accident, testified that he observed a six-inch deep accumulation of water on the road to the northeast of where the Brockman vehicle left the highway. He located a clogged drain beside the roadway from which he removed some debris. The road thereafter drained water in about **40** minutes.

Edwards stated that he had driven over the highway “many times” when it had been raining but did not recall whether he had ever seen water accumulate on the road. On cross-examination Trooper Edwards testified that he had passed the accident site “many, many times” but had never seen water on the pavement at the point of the accident.

Edwards said that as he approached the scene of the accident, he could see the water on the pavement from about **150** to 200 feet ahead.

Claimants introduced into evidence a United States Department of Commerce Climatological data sheet for Springfield, Illinois, which showed that **1.03** inches of rain fell on November **15, 1968**.

George Helmerich, an engineer employed by the Illinois Division of Highways, testified for Respondent that he had supervisory authority over the maintenance of Sangamon County highways in **1968** and in particu-

lar over the portion of the U.S. Route 66 by-pass whereon the accident occurred.

Helmerich identified photographs of the storm drains along the highway and stated that they were standard drains as used generally throughout the highway system. He further stated he was aware of no prior instances of the drain at the accident site becoming plugged. He said that there had been other areas where drains became plugged, but that the accident site was not a "problem area."

Helmerich said that the 30-foot wide median area drained onto both the northbound and southbound lanes, and that it was possible that the drainage carried with it twigs, leaves and dry grass which clogged the drain.

On November 15, 1968, Helmerich had assigned two men to clear and repair sewers on the section of roadway whereon the accident occurred. It was customary for the men to clear sewers in rainy weather in areas where they had previously experienced drainage problems. He testified that the men worked from 8:00 a.m. until 4:30 p.m. and travelled over the entire section of roadway cleaning any areas that were not draining.

It is axiomatic that the State is not an insurer of the safety of all persons who use its highways but is only required to use reasonable diligence in maintaining the roadways under its jurisdiction and control. *Breens v. State of Illinois*, 21 Ill.Ct.Cl. 83. In order to recover for their injuries, Claimants bear the burden of proving by a preponderance of the evidence that Respondent breached its duty of reasonable care, that they were themselves free of contributory negligence, and that the negligence of Respondent proximately caused their injuries.

Claimants seek to charge Respondent with negligence in both the design and maintenance of the highway. Claimants first argue that because the highway and drain were designed in such a fashion as to permit debris and twigs to wash from the median onto the drain on this occasion, Respondent was negligent.

This highway had been designed in **1937**. The record fails to show even one accident caused by flooding in the **31** year interval between the design of the highway and the instant action. Illinois State Trooper Edwards, who had been assigned to Sangamon County for 16 years, testified that he had passed the accident site many times when it had been raining and could not recall its flooding previously.

George Helmerich, an engineer in charge of maintaining the accident site, stated that the accident site was not a problem area with reference to flooding. Further, Helmerich also said that the drain which had become plugged was of a standard design used throughout the highway system.

Claimants have presented no testimony to indicate that the design of the highway and drains were not in conformity with accepted standards in the industry at the time they were constructed, and the record is bare of any evidence of prior flooding which would have put Respondent on notice of the existence of a dangerous condition at the accident site. That in a single instance a drain became clogged is not proof that either the highway or the drain were negligently designed.

Claimants' contention that the State was negligent in failing to properly maintain the road and drain must also be rejected. Claimants contend that in employing only two men to check drains from 8:00 a.m. to 4:30 p.m. on the day of the accident, the State did not act with

reasonable diligence. Essentially, Claimants argue that because it was raining on November 15, 1968, the State should have kept men on duty cleaning drains until the rain ceased.

Again, this record is devoid of any testimony upon which the State can be charged with constructive notice of the tendency of the portion of highway in question to flood. The testimony of the State's engineer that this was not a "problem area" is uncontradicted, and we are not convinced that the State in the exercise of reasonable diligence was required to maintain a constant surveillance over this drain on the chance that it might clog and flood the highway.

Although the Court regrets the damages suffered by Claimants, we conclude that Claimants have failed to prove negligence on the part of Respondent, and these claims are accordingly denied.

(No. 6112—Claimant awarded \$4,719.80.)

**FRANCISCAN SISTERS OF THE IMMACULATE CONCEPTION OF THE
ORDER OF ST. FRANCIS, ETC., Claimants *us.* STATE OF
ILLINOIS, Respondent.**

Opinion filed October 6, 1975.

PUBLIC AID CODE—authority to pay claim. The provisions of the Public Aid Code authorize payment directly to a firm who supplies goods or services to a recipient, being a person receiving financial aid under any provision of the Code.

ESTOPPEL—requirements. In order to be bound by prior proceedings, a party must have been a party of record therein.

SAME—existence. Where a mutual mistake of fact was part of the consideration for agreement, a party is not estopped thereby.

HOLDERMAN, J.

Claimant, owner of St. Anthony's Hospital, filed a claim herein for hospital services supplied to Charles Hamerlinck.

The facts are undisputed. In September, **1969**, Charles Hamerlinck, **63** years of age, became a patient at St. Anthony's Hospital and was not discharged until February, **1970**. The total charge for the hospital services was **\$9,231.50**, part of which has been paid. In November, **1969**, while a patient in the hospital, Hamerlinck applied for Public Aid assistance through the Rock Island County office of the Illinois Public Aid Department. The Rock Island County Public Aid office began an investigation into the eligibility of the patient.

It appeared that previously, in **1967**, Hamerlinck had sold his home for a net price of **\$4,700**. In making its investigation, the local Public Aid office could not account for **\$3,226** of the proceeds and, therefore, could not determine if Mr. Hamerlinck was eligible for Public Aid. In effect, the Public Aid office found that the patient possessed excess assets in the amount of **\$3,226** and was therefore ineligible for aid. There was an appeal taken from this, and on appeal, the Department concurred in the determination that the patient did possess excess assets and entered its order to that effect on September **11, 1970**. No appeal to the Courts was taken from that Department order.

Mr. Hamerlinck's condition improved to the extent that he was able to leave the hospital and go to a nursing home. However, the nursing home wouldn't take him without being assured it would be paid for services it would render him.

In January of **1970**, Claimant and the Rock Island Public Aid office orally agreed that the hospital would look to Mr. Hamerlinck for the payment of its bill in the sum of **\$4,719.80** and that the Department would approve Mr. Hamerlinck as a Public Aid patient retroactive to October **1, 1969**. This would facilitate arrangements for the nursing home to accept Mr. Hamerlinck.

A previous suit for the sum due was filed in the Circuit Court by Claimant against the Illinois Department of Public Aid. The Circuit Court dismissed the case on the grounds that the administrative decision rendered by the Department of Public Aid was a final and binding determination of the issues precluding further litigation.

The hospital appealed to the Appellate Court for the Third District of Illinois. The Appellate Court sustained the trial court's dismissal of the action but based its decision on the grounds that the proper forum to litigate the claim was in the Court of Claims. It made no other determination. See *Franciscan Sisters etc. v. Illinois Department of Public Aid*, 3 Ill.App.3rd 587, 278 N.E. 2nd 105. After that court case was dismissed, the hospital filed its claim before this Court.

The authority for payment of the claim is statutory. See *Ill.Rev.Stat., Ch. 23, §11-13*. The provisions of the Public Aid Code authorize payment directly to a firm who supplies goods or services to a recipient; a recipient being a person who is receiving financial aid under any provision of the Code.

The Respondent, State of Illinois, argues that the Claimant herein was a party to the previous administrative proceedings and therefore was barred from making further claim in this Court. This Court previously held, on a motion to dismiss, that the hospital was not a party to the administrative proceedings and therefore was not bound. Our position is that the hospital had no standing to appeal from the prior adverse administrative order. Respondent argues, however, that Claimant assisted the patient in his application for benefits and in his appeal from the local office to the Department; that Claimant was present at the hearing; that counsel testified, stating that he was present on the behalf of the

hospital; that this made him a party to the administrative proceedings. Respondent acknowledges, however, that in order to participate in an administrative review, it is necessary that one be a party of record. See *Winston v. Zoning Board of Appeals*, 407 Ill. 588.

We do not agree that the hospital was a party of record at the administrative proceedings, and no authority has been cited from which this conclusion must be reached. We see no reason to reverse our former holding in this regard.

In further defense of the claim, Respondent contends that Claimant is estopped to deny the validity of its oral agreement with the Rock Island Public Aid office that the hospital would look to Mr. Hamerlinck for payment of its bill in the amount of **\$4,719.80**. The hospital made this agreement in order to facilitate the removal of Mr. Hamerlinck from the hospital to the nursing home. In return, the Department approved Mr. Hamerlinck as a Public Aid patient retroactive to October 1, 1969. This agreement was sometime in January of 1970. Further, Respondent argues that Claimant waived any claim against the State of Illinois. The waiver theory was substantially the same as the estoppel theory. The agreement between the hospital and the local office of the Public Aid was based on the understanding that there were excess assets in the hands of Mr. Hamerlinck, a fact which did not exist. There was thus a mutual mistake in fact which was a part of the consideration for the agreement.

There is a question whether Respondent can raise the issue of estoppel or waiver without having affirmatively pleaded the defenses. *I.L.P., Estoppel, Ch. 2, §36, Vol. 18*.

Estoppel is allowed as a defense when to do otherwise would help perpetrate a fraud or cause injustice. It

is applied when the facts show that a party conducted himself in a way calculated to influence other who have, in fact, been influenced by it and where substantial injustice results unless the party's promise is enforced. *I.L.P. Estoppel, Ch. 2, §24, Vol. 18.*

In the case before the Court, there is no proof of fraudulent intent on the part of the hospital, and no fraud is being perpetrated by refusing to apply the doctrine.

Nor are we impressed with Respondent's argument that Claimant has waived its rights. Clearly there was no intentional relinquishment of a known right. *I.L.P., Estoppel, Ch.2, §21, Vol. 18.*

Claimant is hereby awarded the sum of Four Thousand Seven Hundred Nineteen and 80/100 Dollars (\$4,719.80), the amount unpaid on the Charles B. Hamerlinck hospital bill.

(No. 6149—Claim denied.)

FLORENCE NESTMAN, Administratrix, ETC., Claimant, *us.*
STATE OF ILLINOIS, Respondent.

Opinion filed August 27, 1975.

RICHARD W. HUSTED, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. The Claimant bears the burden of proving by a preponderance of the evidence that the State is negligent; that the State's negligence proximately caused Claimant's injury; and that the Claimant is free of contributory negligence.

SAME—evidence. Where evidence indicates an intersection is lighted, that the lighting is in better condition than lighting previously existing, that reflectorized warning signals exist, and that decedent was contributorily negligent, wrongful death claim is properly denied.

BURKS, J.

This is a claim for wrongful death. Claimant is the widow and administratrix of the estate of Clifford Nestmann, who died on September **6, 1970**, when the motorcycle he was driving collided with a safety island and traffic sign on Highway **31**, immediately north of its intersection with Virginia Road in McHenry County. The court's jurisdiction is stated in the Court of Claims Act, §8(d).

The State's liability, if any, must be based on a finding that the Respondent was negligent; that its negligence was the proximate cause of the death of Claimant's husband; and that the decedent was free from contributory negligence. *Howell, Administrator of the Estate v. State*, **23 Ill.Ct.Cl. 141**. Before determining these issues, we summarize the facts in the record as follows:

Very early in the morning of September **6, 1970**, at about **3:30** a.m., Claimant's husband was travelling southward on Illinois Route **31**, approaching its intersection with Virginia Road. It was dark. He was operating a motorcycle, and was the lead vehicle of two other motorcyclists who were his companions. He was travelling just inside and to the right of the white center line of Route **31**.

At this point Route **31** heads straight north and south for a distance of several miles. The only deviation from a straight southerly course, which Claimant's husband was travelling, was immediately north of the intersection with Virginia Road. There southbound travelers, due to the recent reconstruction of the intersection, were required to swing out to the right to pass a recently constructed safety island.

The reconstruction of the intersection included the placement on Route **31** of an elongated curbed island in the middle of the highway, **433** feet in length. South-

bound traffic was required to swing out to the right to go around it. From the north point of this island, a corrugated, raised rumble strip extended northward an additional 150 feet.

The construction was completed, and Route 31 had been reopened for traffic for 20 days. A reflectorized sign reading “KEEP RIGHT” was in place on the island approximately 33 feet south of the island’s north tip. This sign faced and warned southbound traffic.

Claimant’s husband, traveling approximately 60 to 65 miles an hour, which was then within the speed limit, traversed the raised rumble strip in the middle of the highway, struck the north point of the island, and continued on, striking the right edge of the “KEEP RIGHT” sign. He was thrown from his vehicle, struck the pavement some great distance from the point of impact, and was pronounced dead on arrival at the hospital in Elgin.

Prior to the reconstruction of this intersection, there had been for several years an overhead yellow blinker light which operated 24 hours per day in the center of the intersection. This light provided some illumination, but its primary purpose was to warn approaching motorists of the intersection. After the reconstruction of the intersection this light was removed, and new lighting was installed. It is undisputed that, at the time of the accident, there was no overhead light fixture in the immediate vicinity of the north end of the island where the accident occurred. The evidence is conflicting as to whether the intersection itself was illuminated, and, if so, how well. The evidence is also conflicting as to exactly what warning signs were in place at the time of the accident. These disputed matters are discussed more fully below when we deal with the alleged negligence of the State.

Claimant, in her brief, states her theory that the State was negligent as follows:

1. In failing to continue lighting this intersection, after having done so for years, and after claiming that it recognized need for, and had installed, new lighting on May 22, 1970, some three months prior to the collision resulting in death.
2. In failing to light the hazardous part of the intersection, i.e., the approach to the island where the pavement curves to the right to go around the island; and
3. In failing to provide warning signs or blinkers on such approach.

These points will be discussed in the order stated.

[1] Alleged failure to light the intersections.

Claimant's two eye witnesses, the other two motorcyclists travelling with Claimant's husband, testified that the intersection was totally without illumination at the time of the accident. Decedent's father-in-law testified that at about 6:30 a.m. the morning of the accident he went to the scene of the accident and found that the light pole was down, not having yet been installed, and that there were no lighting fixtures overhead. Another of the Claimant's witnesses, Byron Brouty, whose parents lived near the intersection, testified that no lights were installed at the intersection until a year after the accident, and then they were installed on wooden poles.

The testimony of this witness, like that of the decedent's father-in-law, that the light at the intersection had not been installed at the time of the accident, is clearly contradicted by the weight of the evidence discussed below: the observation of the police officers called

to the scene; the business records of Commonwealth Edison; and the records of Respondent's Division of Highways.

Edward Sachel, an officer of the Cary Police Department, knew that the overhead lights were in place at the time of the accident but could not say whether they were on, since his own car lights shown on the motorcycle, **on** Mr. Nestmann's body, and provided all the light he needed.

When this officer arrived at the scene, he saw two men fighting. They were later identified as Claimant's two eye witnesses who were members **of** a motorcycle club, the "Tin Ponies," and who were threatening Deputy Sheriff Edgar Fair because he hadn't moved the decedent's **body**.

Edgar Fair, Deputy Sheriff **of** McHenry County, could cast no light on the question of whether the overhead lights were on. He couldn't recall, because he was so frightened and shook up at the time. One of the other motorcyclists had threatened to kill him if he didn't take his friend to the hospital in the squad car instead of waiting for the ambulance he had called.

George A. Stackhouse, an Algonquin policeman, testified that he arrived at the scene **of** the accident shortly after it occurred, and that the area was well lit by big arc lamps.

The officer said the area was so well lighted that he did not need to use his flashlight; that, in fact, he was able to see and to pick up small pieces **of** the bike. On cross-examination, he officer's testimony was unshakable. He testified that "we had no trouble in seeing and even in picking up small bits of metal". He was also positive that the illumination was provided by the overhead lights and not by car headlights.

In our opinion the testimony of Officer Stackhouse that the area was well lit by arc lights should be accepted, even though he was in error in describing the lights as blue rather than amber, as stated below by Commonwealth Edison.

Pursuant to a subpoena, Mr. Joseph J. Stephens, of Commonwealth Edison, testified that his company installed two mercury vapor lights of **15,000** lumen power each at the intersection on May 22, **1970**, three months before the accident. Mr. Stephens further testified that the lights were ordered by, and billed to McHenry County Division of Highways, and that Commonwealth Edison had the responsibility for maintaining these lights. The records of Edison, also subpoenaed and admitted into evidence, indicate that there was no interruption of electrical facilities or malfunction in these lights for the month of September, **1970**, nor did Edison ever learn of a malfunction in these lights even though, in such an instance, they always eventually do. The lights installed were of an amber color, rather than the conventional blue. Mr. Stephens explained that amber is a more dramatic light than blue to call attention to the intersection, and that these lights were visible from a distance of several miles. In this connection, we notice that the evidence shows that the approach to this intersection from the north was straight and level for almost two miles.

The preponderance of the evidence does not support Claimant's first contention that the intersection was not adequately lighted at the time of the accident.

[2]Alleged failure to light the hazardous part of the intersection. Claimant is correct in that there was no additional light at the northerly tip of the safety island which the decedent hit. The Court takes judicial notice of the fact that, while mercury amber lights can be seen

for great distances, they would not fully illuminate the tip of the island several hundred feet north of the intersection. Respondent's color photos, admitted into evidence, show the great distance of the lighting fixtures from the northerly tip of the island. Respondent's Exhibit 3 is also significant in this regard, showing that the two light fixtures are installed at the very southern margin of the intersection. Additional overhead lights at the north end of the island would, no doubt, have been an added safety factor. The Court cannot say, however, that the State was actionably negligent for failing to install such additional lighting at the northern tip of the safety island in view of the **150** foot rumble strip warning at the approach to the island, the numerous reflectorized warning signs discussed below, and the fact that there was much better lighting at the intersection than had previously existed.

Claimant relies heavily on the fact that the intersection was formerly lit by one yellow, flashing warning light. Obviously, if two amber mercury arc lights did not light up the tip of the safety island, a blinking yellow light 500 feet south of the scene would not have done so either. The previous blinking light at the intersection was a caution light only and did not illuminate the intersection. Claimant's contention that the State failed to *continue* lighting this intersection is without merit.

[3]Alleged failure to provide warning signs or blinkers. Although Claimant's witnesses gave conflicting testimony as to the type and number of warning signs, the evidence clearly establishes that the following signs were in place at the time of the accident: (1) A diamond-shaped "CENTER CURB AHEAD" sign more than 500 feet north of the island; (2) a "side-road" sign 600-700 feet north of the intersection; (3) a diamond shaped sign depicting a "staggered intersection"; and

finally (4) the “KEEP RIGHT” signs on the island itself; all of these were in place at the time of the accident, and were reflectorized.

This testimony, confirmed by other witnesses, was given by William Carl Brandt, Jr., of the Division of Highways, who was responsible for signs and pavement markings for the area in question.

Joseph Kostur, of the Division of Highways, prepared Respondent’s Exhibit 8, a diagram of the area in question showing the aforesaid signs, their position, and where the street lamps were placed. This document’s accuracy was verified by Brandt, by the Commonwealth Edison representative, and by the three police officers. Hence we find Respondent’s statement of facts concerning the reflectorized warning signs supported by a preponderance of the evidence.

The evidence also shows that the curb of the island was reflectorized, and that the highway had been restriped with a reflectorized center line and edge lines. The 150 foot rumble warning strip approaching the island was also in place. Claimant’s assertion that the safety island was a “death island” is further contradicted by the accident statistics submitted by the Respondent.

The cases cited by Claimant do not support her theories as to Respondent’s alleged negligence. In *Chicago u. Powers*, 42 Ill. 169, a 1866 case, the Court ruled that previous accidents were admissible where a pedestrian fell off of a swinging, unlit bridge. In the case at bar, the only testimony as to previous accidents was produced by Respondent during presentation of its case-in-chief. This evidence clearly established that the number of accidents at the intersection had declined as a result of the reconstruction of the intersection. In *Jockens u. City of Chicago*, 6 Ill.App.2d 144, 127 N.E.2d

142, the court ruled that the city did not have adequate notice of the non-functioning of a temporary fixture. In *Baras u. City of Chicago Heights*, 99 Ill.App.2d 221, 240 N.E.381, the Court ruled that where it was alleged that the city was negligent in the way it lit an intersection, *and expert testimony was given* as to industry lighting standards, then a question of fact was raised for the jury to determine. There was no expert testimony offered by the Claimant in the case at bar, and we find no proof that the lighting was inadequate **or** violative of industry standards. In fact, the evidence was that the lights placed were particularly visible for a distance of miles to call attention to the intersection.

As to Claimant's contention that the State was negligent in constructing a "curbed island" in the intersection and for failing to light it, she cites *Huyler u. City of Chicago*, 326 Ill.App. 555, 62 N.E.2d 574; *Rohwedder u. Chicago*, 332 Ill.App. 700, 53 N.E.2d 495; and *O'Connell v. Chicago & North Western Railroad Co.*, 305 Ill.App. 430, 27 N.E.2d 644. The first two cases are abstract opinions only. *Huyer* apparently hinged upon plans for reflectorized buttons which were not installed, as well as a similar accident prior to the one at bar therein. In the case at bar, the evidence clearly established that all plans for signs and striping were fully implemented prior to the accident, as well as the absence of any similar mishap either before or after Nestmann's fatal accident. In *Rohwedder*, another abstract opinion, the case turned upon the concealment of an island and pole due to a snowstorm. The *O'Connell* case involved a suit by a passenger (and hence no contributory negligence) for injuries sustained in a car collision with an unlit dirty gray or black railroad trestle which was unprecedented by any signs. In the case at bar, the adequacy, position, and number of signs in place were clearly established. Claimant's "inadequate lighting" theory has been previously discussed.

In support of her theory that the State failed to provide warning signs in advance of the intersection, Claimant relies on *Wells u. Kenilworth*, 228 Ill.App. 332. In *Wells*, the Court reversed a directed verdict for defendant and remanded the case for new trial on the grounds that certain questions of fact which should have gone to the jury were raised. In that case, plaintiff drove into an unlighted safety island lamp post maintained by the department which was two feet square and ten feet high. The salient points in *Wells* were as follows: (1) The lamp post was unlit; (2) it was shaded by trees; (3) it had been struck a few days before under the same conditions by a truck; (4) the department was responsible for turning on the lights; (5) there were no advance warning signs to advise of the presence of the island. All of these facts differ from the evidence in the case at bar.

Finally, it is clear to the Court that even if we could find some degree of negligence on the part of the State in this case, it was not the proximate cause of the accident. The preponderance of the evidence supports our finding that the negligence of Claimant's intestate was the proximate cause of his fatal accident. He was certainly not free from any contributory negligence.

This Court has always followed the rule that contributory negligence on the part of a Claimant is a bar to recovery of damages. The contributory negligence rule was carefully reconsidered and reaffirmed by the Illinois Supreme Court in *Maki v. Frelk*, 40 Ill.2d 193. This rule makes it incumbent upon the Claimant to prove that her husband did nothing to contribute to the accident. *Emm and Vanda u. State*, 25 Ill.Ct.Cl. 213.

The deceased's two companion motorcycle drivers each saw the safety island as they approached it. Even if the deceased had been unfamiliar with the intersection, he should have been able to see what the others saw in the same existing light.

Claimant's eye witness, James Clark, testified as follows:

Well, we were going down the road. Like I say, they were in front of me a ways. It looked to me like Cliff [Nestmann] was going a little too close to the center curb.

I was going to say something before, but I didn't. It looked like he was getting a little too close to it [the safety island]. I thought maybe he was going to swerve at the last minute or miss it.

Then all of a sudden I seen the sparks flying from his motorcycle when he hit the ground. Then I knew he hit the curb.

The other eye witness, Patrick Beckman, testified as follows:

Well, Cliff Nestmann and I were in the lead. Jim had a problem with his bike, and we were in the lead. I was just a little bit behind him. He was in the left, like where the left tire of a car would ride. He was riding there, and I was riding to the right. As we approached the intersection he hit the curbing there. He went on the rippled part and hit the curbing, and that's where he got killed.

It appears to the Court that the deceased had ample opportunity to go around the safety island, but without any deviation in his course whatsoever, traversed all or part of the rumble strip, a distance of 150 feet, and then hit the north end of the island dead center.

There was nothing to obstruct decedent's view of a well posted and illuminated intersection, the presence of which was clearly marked by several reflectorized signs as well as reflectorized striped markings, and a 150 foot rumble strip. He was driving at a speed of 60 to 65 mph on a high-powered motorcycle which had been modified, and whose standard tire with a four and one-half inch tread had been replaced with one of only a three inch tread. It was on this high speed vehicle that the decedent met his death, and which was ultimately buried with him, according to the testimony of his companion, Patrick Beckman.

Prior to the accident, deceased was apparently driving in the very center of the highway. He ran straight

into a reflectorized sign with his headlights on. Moreover, he had passed the island earlier in the evening going north, and should have known that it was there. At the time of his demise, Clifford Nestmann's driving license had been suspended, the second such suspension he had received.

The evidence shows that Mr. Nestmann was familiar with the intersection in question and had driven past it only a few hours before his fatal accident. Testimony of one of the eyewitnesses also established that there was no change in conditions during this brief period of approximately four hours. One who has earlier the same evening traveled over a certain stretch of highway is charged with a knowledge of its condition so long as the condition is unchanged on his return trip. To approach a place of known danger without care commensurate with such danger is contributory negligence. *Doolittle u. State*, 21 Ill.Ct.Cl. 112; *Mason v. State of Illinois*, 21 Ill.Ct.Cl. 446; *Mounce u. State of Illinois*, 20 Ill.Ct.Cl. 268; *Link u. State of Illinois*, 24 Ill.Ct.Cl. 69.

An analagous situation was presented to this Court in *Sam Weisman v. State of Illinois*, Ill.Ct.Cl. No. 5233, filed May 9, 1972. In *Weisman* the Claimant, while driving his automobile at night, struck a metal guard rail serving as a lane divider on the Dan Ryan Expressway. In that case there was a rumble strip about 100 feet long in front of the divider, which we said "would give every driver ample warning of the existence of the divider ahead" and, moreover, "Claimant had been over the road on at least one previous occasion."

This Court has also stated and followed the rule that it is the duty of every driver to maintain control of his vehicle, and the failure to do so amounts to negligence. *Schuck & Maryland Casualty Co. u. State*, 25 Ill.Ct.Cl. 209.

While the Court regrets the tragic death of Clifford Nestmann, this claim must be, and is, hereby denied.

(No. 6214—Claimant awarded \$13,855.65.)

JOHN M. NAGLE, Claimant, *us.* **STATE OF ILLINOIS**, Respondent.

Opinion filed December 1, 1975.

VOGEL & VOGEL, by **DAVID F. HOLLAND**, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—stipulation. Claim for back salary by attorney who was separated, and was reinstated. Award of \$1,309.00 per month by stipulation of parties.

SAME—duty to mitigate. Where Claimant was reinstated at a higher salary level than that at which he was terminated and where Claimant was involved in a seminar trip at his own expense while not in the State's employ, Claimant did not mitigate damages, and appropriate amounts may be deducted therefrom.

HOLDERMAN, J.

Claimant, John M. Nagle, seeks to recover his salary from the State of Illinois for the periods of May 2, 3, and 4 of 1966, and from May 13, 1966, to May 31, 1970.

Claimant was separated from the payroll of the State of Illinois on May 13, 1966, and remained separated until June 1, 1970. On June 1, 1970, Claimant was reinstated to his previous position as Hearings Referee in the Division of Unemployment Compensation, Department of Labor, State of Illinois.

It was stipulated between the parties hereto that the Claimant should have been earning \$1,309.00 per month. This was part of the stipulation entered into by and between the parties in a case in the Circuit Court of Cook County, Cause No. 70L17874.

The issue here is whether the State is entitled to a

reduction in the amount due the Claimant by reason of Claimant's failure to conscientiously and adequately mitigate the damages for the period that he was not employed by the State.

Claimant testified extensively concerning his activities in attempting to find other employment as an attorney and the results of his full-time pursuit of a private practice. His testimony indicated that during this period he applied to numerous firms for employment without success. The evidence also shows that he resumed his private practice full-time during this four-year period at which time his gross receipts from his practice totalled only **\$8,000.00**. The evidence further reflects that in 1971, after Claimant resumed working for the State, his part-time practice grossed **\$4,866.66**. Claimant alleges that he used his savings and \$29,000.00, which he obtained from the sale of stocks, to support himself while he was not working. The evidence indicates that he was active in the stock market while this claim was pending.

Evidence also indicates that Claimant spent \$475.00 on a seminar trip to Las Vegas.

The law in this State concerning a wrongfully discharged State employee is summarized in the case of *Schneider v. State*, 22 Ill.Ct.Cl. 453, wherein the Court stated that:

He is entitled to the salary attached to said office for the period of his illegal removal.

In the same case, at pages **463** and **464**, the Court noted:

. . . that a Claimant must do all in his power to mitigate damages, . . . and, in that regard, sitting as a jury, we have the right to **fix** the damages, and make an award, which we believe would be fair to all concerned. **W e** are, however, not bound by the bill of particulars, stipulation, or answer to interrogatories, and can arrive at a figure in addition to the deductions made for other earnings . . .

In the case of *William R. Otto, Donald W. Houston and Edmond J. McShane u. State of Illinois*, 24 Ill.Ct.Cl. 72, this Court laid down the rule that in a claim for back salaries:

The burden is upon Claimants to mitigate damages, and that all monies earned during the period of time from employment, but not investments, should be considered as a set-off against wages claimed because of unlawful dismissal from State employment.

In the case of *Nicholas Mellas u. State of Illinois*, 24 Ill.Ct.Cl. 350, the Court laid down the rule that it is the duty of every suspended State employee to mitigate damages incurred through loss of salary due to suspension and discharge. This Court, in discussing this principle, stated the following:

The principle that it is the duty of every suspended State employee to mitigate damages incurred through loss of salary due to suspension and discharge, and to do all in their power to seek, find, and accept other employment during the period following discharge is well established.

In the case of *R. Corydon Finch u. State of Illinois*, 26 Ill.Ct.Cl. 14, this Court laid down the following rule:

This Court has long followed the principle of 'avoidable consequences' which holds that a Claimant must use such means as are reasonable under the circumstances to avoid, mitigate, reduce or minimize the damages, which he has incurred as a result of a wrongful act.

This Court, in the case of *Axel Gilbert Anderson u. State of Illinois*, 25 Ill.Ct.Cl. 198, laid down the rule that this Court has the right to independently determine Claimant's damages, both with respect to mitigation of damages and set-offs of outside earnings during the period of unlawful dismissal.

The sole question, therefore, before this Court is whether or not the Claimant did everything in his power to mitigate the damages during the period of time that he is seeking to recover for lost wages from the State.

It is difficult to reconcile the earnings testified to by the Claimant during this period, particularly compared

to the immediate increase in earnings when he was put back upon the State payroll. It is also rather difficult to reconcile the fact that an individual would spend **\$475.00** on a seminar trip to Las Vegas when he is earning practically nothing.

It is the opinion of this Court that this Claimant did not in fact do everything in his power to mitigate the losses incurred by himself during the period that he was suspended from the State payroll.

It is the opinion of this Court that if Claimant had diligently applied himself to his law practice during this period of time, the damages would be considerably less than those claimed by him.

It is the opinion of this Court that an award in the amount of \$20,000.00 is fitting and proper, which amount is to be full and complete compensation for any and all damages, as well as salary, incurred by the Claimant as a result of this discharge, and which award shall be subject to the following deductions:

Employee's State Employees'		
Retirement System Contribution	.....	.\$3,372.10
Federal Income Tax to be withheld	.....	.2,668.00
State Income Tax to be withheld	.....	.104.25
TOTAL DEDUCTIONS	.....	.\$6,144.35

The above deduction to the State Employees' Retirement System is based upon the amount that would have been deducted had Claimant not been suspended from the payroll of the State of Illinois, which amount was **\$47,741.47**.

An award is hereby made to Claimant in the amount of \$20,000.00, minus deductions in the amount of **\$6,144.35**, or a total award of Thirteen Thousand Eight Hundred Fifty-five and **65/100** Dollars (**\$13,855.65**).

A further award of \$3,235.60 is hereby made to the State Employees' Retirement System as the State's contribution to equal Claimant's contribution.

(No. 6287—Claimant awarded \$2,336.00.)

P. K. KURSON, INC., Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed August 18, 1975.

SORLING, CATRON and HARDIN, by STEPHEN A. TAGGE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—*additional* expense not contemplated. Where Claimant contracted with State to expand certain parking facilities, after removing trees on certain land, Claimant may recover ~~for~~ additional expense in chipping and mulching said trees, since burning was not allowed by standard specifications.

SAME—*ambiguity*. Any ambiguity in a contract should be construed against the party preparing the contract.

SAME—*Same*. The specific provisions of a contract will prevail over general provisions of the contract.

BURKS, J.

This claim arises out of a contract entered into with the State by P. K. Kurson, Inc., a Springfield construction contractor (hereafter referred to as Kurson). The contract was to expand the existing parking facilities at the Division of Highway Building located on By-Pass 66 in Springfield. (Contract No. H.B.-1739; Sangamon County; Administration Bldg. Parking Lot.)

The site of the new parking lot was an area covered with trees. Kurson had to remove and dispose of the trees as part of his contract, and this was the first portion of the work that had to be completed. The contract authorized him to burn the trees and brush on the job site. The State later refused to allow the burn-

ing. To comply with the State's order, Kurson was forced to employ a subcontractor with a "chipper" to chip and mulch the trees on the job site. This work was done by James M. Canfield Contracting and Trucking, Inc., and Kurson paid this subcontractor **\$2,336** for this extra work.

The contract provided that the trees were to be removed in accordance with Section **201** of the Standard Specifications for Road and Bridge Construction, adopted August 1, **1968**. Section **201** is titled "Clearing, Tree Removal, Hedge Removal." Section **201.08** is as follows:

Section 201.08 Disposal of Materials. This work shall be done in accordance with Article 202.03.

The pertinent portion of Section **202.03** is as follows:

All trees and materials that can be destroyed by burning shall be disposed of within the right-of-way at locations designated by the Engineer in such a manner that public or private property will not be damaged or endangered. No burning of surplus materials will be permitted in or near areas designated as natural scenic areas that are to remain undisturbed.

Kurson claimed that the chipping and mulching, in place of burning, was an extra expense for which he should be compensated in the amount of the actual cost, **\$2,336**.

In discussions and correspondence with Respondent's engineer, the State said it would allow Kurson to burn the material if he could get permission from the Illinois Pollution Control Board to do so. Kurson was unable to do this. The State also tried unsuccessfully to obtain said permit. Respondent felt obliged to decline payment of this extra cost since Section **107.04** of the Standard Specifications made it Kurson's responsibility to obtain this permit. The said Section **107.04** reads as follows:

Permits and Licenses. The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

Respondent concedes the merits of this claim and apparently would have recommended payment of the extra expense incurred if the contractor had submitted a written denial from the Pollution Control Board of his request for a permit to burn the material. This is confirmed in the following quotations from a letter to the Claimant dated June 10, 1970, from Respondent's District Engineer, c . E. Johnson:

Tree Removal. It is my understanding that you were advised on June 3, 1970, at a jobsite meeting that burning of trees would not be permitted on the property. Again on June 5, 1970, you were instructed that the tree and brush removal must be trucked away from the property unless you provide some method of chipping or composting. The resulting material could be incorporated with the earth.

The Department has tried without success to obtain a permit to burn the material on the jobsite. You may on your own initiative make an attempt to obtain a similar permit to allow burning. If you have a written denial from the proper authorities for this request, we would recommend for approval ~~by~~ the Bureau of Construction that the chipping or composting be allowed as an extra expense to this section.

Respondent concedes that Claimant's brief has accurately stated the applicable law in this cause, and we granted Respondent's motion to waive filing a brief.

We find that Claimant's failure to obtain a permit to burn the trees from another State agency, making it impossible to perform this phase of the contract as contemplated by the parties, is not sufficient grounds to deny payment of Claimant's extra expense thereby necessarily incurred.

"the intention of the parties to a contract should be determined from the language employed in the contract. *Schek v. Chicago Transit Authority*, 247 N.E.2d 886, 42 Ill.2d 362; *I.L.P. Contracts* §213. The language in this contract shows specifically that the parties intended the trees to be burned.

There was uncontroverted evidence in the record that the construction practice in Sangamon County in May and June of 1970 was to burn the trees at the job site.

The State prepared the contract including the special provisions and the Standard Specifications. Any ambiguity in a contract should be construed against the party preparing the contract. *Suess v. Jousma*, 259 N.E.2d 349, 122 Ill.App. 415; *I.L.P. Contracts* §222. The specific provisions of a contract will prevail over general provisions of the contract. *Olson v. Rossetter*, 71 N.E. 2d 556, 330 Ill.App. 304; *I.L.P. Contracts* §222. The specific agreement between these parties was to burn the trees. Since this method of disposal could not be used, the contract was changed. The chipping process required was different and more expensive than the contract specified. This was a change, an extra, for which Claimant is entitled to be paid, as contemplated by the contract itself.

The amount of the extra expense incurred by the Claimant is not in dispute, and Claimant is entitled to an award of **\$2,336**.

In response to the Court's recent inquiry, we were advised by the Secretary of State's Corporation Division that the Claimant, a Delaware corporation, was authorized to do business in Illinois, June **16, 1969**, and that its authority was revoked November **15, 1972**. (File No. **494-8**; Box **#4951** in the archives.) The parties to this claim have stipulated that the Springfield Marine Bank will receive all sums recovered in this action, as it has a security agreement covering Claimant's accounts receivable. Counsel for the Claimant has advised the Court that an award made to the Claimant can be properly negotiated.

Claimant is hereby awarded, as an amount due under a contract, the sum of Two Thousand Three Hundred Thirty-Six Dollars (**\$2,336**).

(No. 6505—Claimant awarded \$15,000.00.)

LOUIS PIROVOLOS, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

opinion filed March 29, 1976.

PRISONERS AND INMATES—*wrongful* incarceration. Where Claimant receives a pardon from the governor, stating he is innocent of the crime for which he was imprisoned, Claimant will be awarded the amount due, including attorneys fees.

PERLIN, C. J.

This is a claim for compensation for time unjustly served in prison, brought pursuant to Section 8(c) of the Court of Claims Act, *Ill.Rev.Stat., Ch. 37, 439.8(c)*, which grants this Court jurisdiction over:

All claims against the State for time unjustly served in prisons of the State where the persons imprisoned shall receive a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned; provided, the Court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than \$15,000; for imprisonment of 14 years or less but not over 5 years, not more than \$30,000; for imprisonment of over 14 years, not more than \$35,000; and provided further, the Court shall fix attorney's fees not to exceed 25% of the award granted.

This matter comes before the Court on the motion of the Claimant for judgment on the pleadings.

On consideration of the amended complaint, the answer to the amended complaint, and Claimant's motion for judgment on the pleadings, the Court finds:

1. That from September 9, 1967, to June 18, 1970, Claimant was unjustly imprisoned in a penal institution of the State of Illinois.

2. That on October 21, 1974, Claimant was issued a pardon on grounds of innocence by the Honorable Daniel Walker, Governor of the State of Illinois.

3. That as a result of his unjust imprisonment, Claimant incurred substantial legal expenses, and suffered a loss of income.

It is therefore ordered that Claimant's motion for judgment on the pleadings be, and hereby is, granted.

It is further ordered that Claimant be, and hereby is, awarded the sum of Twelve Thousand Five Hundred Dollars (\$12,500), and that Claimant's attorneys fees are fixed at 20% of said amount.

(No. 6667—Claim denied.)

GREGORY CLER, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, AND BOARD OF TRUSTEES OF UNIVERSITY OF ILLINOIS, Respondent.

Opinion filed April 7, 1976.

PHILLIPS, PHEBUS, TUMMELSON & BRYAN, by JOSEPH W. PHEBUS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

NEGLIGENCE—*duty of care.* The law of Illinois places a duty of care upon those in charge of children to exercise reasonable supervision so as to avoid injury to the children or third parties. However, it is not the duty of authorities to stand guard over them at all times.

SAME—*evidence.* Where testimony indicates children were routinely left unsupervised for 20 minutes each morning while at State camp in order to clean their cabins; and where accident to a child occurred during this period, State is not negligent in failing to reasonably supervise the children.

HOLDERMAN, J.

Claimant, a 13 year old boy, was a guest staying at the 4-H Memorial Camp located at Allerton Park in the County of Piatt, State of Illinois, in the summer of 1971. Claimant had been enrolled in this camp on previous occasions.

This summer camp is owned by the Board of Trustees of the University of Illinois.

Claimant was one of 177 minor campers whose ages ranged from 9 to 16 who were in attendance, along with

35 to 40 adult supervisory personnel. The campers were at the camp for a five-day stay.

The rules of the camp provided that every morning at a certain time the inmates of the various cabins were required to clean up their cabins and prepare them for inspection. This was done on a competitive basis; and for a period of perhaps 20 minutes each day during this cleanup, the supervisors of the various cabins were in an executive session discussing the programs for the day.

On the day in question, a disturbance developed between the boys staying in Claimant's cabin and some boys staying in an adjacent cabin. Aerosol spray cans were used by the inmates of the two cabins in the action that followed.

In the midst of the horseplay, a boy from a cabin other than Claimant's cabin picked up a broom and threw it into the Claimant's cabin. Unfortunately, the blunt end of the broom struck the Claimant in the left eye, resulting in the permanent loss of the central vision in the left eye. The boy who threw the broom, Gary Leon Prosser, had attended the camp for several previous sessions.

The evidence is clear and uncontradicted that with the exception of approximately 20 minutes in a 24-hour period, the boys were under the direct supervision of adults who were in charge of the cabins.

Claimant alleges that failure to supervise during the 24-hour period was a "breakdown of supervision" and a "gross disregard" of responsibility by the supervisors.

Claimant also charges that the State was negligent and careless in allowing Gary Leon Prosser to attend the camp because it should have known that he was a dangerous youth. The evidence indicates that Prosser

had been at the camp on at least three previous occasions, and one of the counselors testified that he had been a member of 4-H for approximately three years. There was no evidence or information indicating that he was anything but a normal child. School records were introduced showing that he had never been sent home for disciplinary purposes.

The camp director, who had been with the camp for approximately 15 years, stated that he had never been advised to pay particular attention to Gary Leon Prosser as being a problem child.

It appears from the evidence that Claimant, Gregory Cler, had attended 4-H camp prior to the year he was injured and that on no occasion had he or his mother ever made any objections to the manner in which the camp was operated.

Claimant also testified that in the years he had been at the camp before the incident in question, there had been no fights or horseplay with insecticide sprays.

The evidence is clear that a routine camp schedule was being followed on the day in question which was basically the same routine that had been followed for approximately 14 or 15 years previously.

The sole question involved is the responsibility of the State of Illinois in relation to the supervision of the activities of the campers at the 4-H Camp at Allerton Park. The deciding question is whether or not the action of the Respondent in allowing the campers to engage in a 20 minute cleanup period without adult supervision is such negligence as may charge the State with the responsibility for the unfortunate injury sustained by Claimant, Gregory Cler.

The first issue before the Court is whether or not the legal obligation was breached by the State of 11-

linois, and the second issue is whether the breach of that obligation was the proximate cause of Claimant's injury.

The Claimant would place a burden of supervision upon the State that would be practically impossible to fulfill. Twenty-four hour a day supervision is not exercised by parents, and to place a greater burden upon the State than is placed upon parents would seem entirely unreasonable and unjustified.

In *Stanley u. Board of Education*, 293 N.E.2d 417, the First District Appellate Court held that, under the particular facts in that case, it could not be said as a matter of law that the Board of Education was not negligent in an alleged "failure to supervise" situation. It is clear that the law of Illinois places a duty of care upon those in charge of children to exercise reasonable supervision so as to avoid injury to the children or third parties. *Kita u. YMCA of Metropolitan Chicago*, 47 Ill.App.2d 409; *Stanley u. Board of Education*, 9 Ill.App.3d 962; *Miller u. Veterans of Foreign Wars*, 56 Ill.App.2d 343. However, it is not the obligation of school authorities, or others in charge of children, to stand guard over them at all times to protect them against the mischievous acts of other students. *Lucille Kos u. Catholic Bishop of Chicago*, 317 Ill.App.2d 248, 253.

The present case does not involve a situation where the children alleged to be unsupervised were engaged in a hazardous or potentially hazardous activity. The duty of care upon Respondent, State of Illinois, in the present case is different and less than the duty of care which might be imposed in the event the children were engaged in hazardous activities at the time of an injury. *Harring u. Mathas*, 126 S.E.2d 863.

We fail to find Illinois authorities for the proposition that camp authorities, or those in charge of children on a "live-in" basis, are obliged to maintain a constant

vigil over children in order to protect against potential injuries.

Applying the facts of the instant case to the above cited authorities, and those numerous authorities cited and discussed in the respective briefs of the parties hereto, we cannot conclude that the Respondent was negligent in the present case. In order to so hold, the Court would have to decide that the teachings of 15 years of experience in the operation of the 4-H Camp at Allerton, and the program for a 20 minute period of time in which the campers were required to clean their cabins and perform personal acts of hygiene, without direct supervision, would be such as to naturally and probably result in an injury to a camper. Such a decision seems contrary to logic. Indeed, it would seem that such a limited program of self-reliance in the performance of routine chores, without the direct supervision of adults, would be a meaningful and necessary part of any program for the development of a degree of responsibility in young people.

In conclusion, we are not unmindful of the nature and extent of the injuries and misfortunes which the Claimant has suffered as a result of this unfortunate occurrence; however, we are unable to conclude, based upon the evidence in this cause, that the camp counselors and administrative personnel were negligent in the present case.

It is the opinion of this Court that the responsibility placed upon the Respondent in conducting the camp was fully carried out and that lack of adult supervision for a 20 minute period is not such a lack of supervision as to make it liable for the unfortunate incident which occurred.

An award is hereby denied.

(No. 6755—Claimant awarded \$10,215.00.)

THE CANAL RANDOLPH CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LABOR, BUREAU OF EMPLOYMENT SECURITY, Respondent.

Opinion filed December 3, 1975.

CONTRACTS—ambiguity. There is no need to resort to extrinsic facts where the intent of parties in executing a lease is clearly ascertainable from the lease itself.

SAME—evidence. Where a contract is silent and unambiguous, a landlord does not necessarily have a right to increase rent when his burden is increased.

SAME—same. Where a lease specified hours of heating to be supplied, but was silent as to air conditioning, Claimant will be awarded sums equal to estimated costs per hour times number of hours over normal daily, that air conditioning is used.

HOLDERMAN, J.

In February-of **1955**, the State of Illinois, through its Departments of Finance and Labor, entered into a lease with Butler Brothers, Claimant's predecessors, for office and warehouse space in a building at Randolph, Canal and Lake Streets, Chicago, Illinois. The lease was to take effect on July **1, 1955**, and the original term was for two years. The lessee was given the option to renew for nine successive two-year terms. Rent was stipulated at \$2.50 per year per square foot of office space and **\$1.50** per year per square foot of warehouse space. Thereafter, under the option periods, the amount of office space was to be computed at a **\$1.60** per annum per square foot.

Butler Brothers conveyed the premises to Claimant, along with an assignment of the lease, and Respondent started paying rent to the Claimant October **1, 1956**.

The options to renew the lease were exercised.

In June of **1970**, Claimant began billing Respondent for alleged excessive air conditioning and heating charges incurred as the result of Respondent's usage of the premises in double and triple shifts.

Count I of the complaint seeks damages in the sum of **\$75,000** on the theory that when the premises were leased it was understood that Respondent would use the premises only from 8:00 a.m. to 6:00 p.m., Monday through Friday, and from 8:00 a.m. to 2:00 p.m., on Saturdays, but that contrary to the understanding, the Respondent had for several years been using part of the premises for **24** hours Mondays through Saturdays. The basis of the complaint is that the use of the premises by the lessee was in excess of the original contemplated use and, because of that, Claimant had to furnish additional heat, air conditioning, electrical services and maintenance.

Count II of the complaint requested reformation of the lease so that Claimant could continue to collect for the alleged excessive use in future years.

The Claimant contends that it is entitled to **\$120,031** for the period from June, **1970**, to October, **1972**, based on a charge of **\$15** per hour for the off hours. The **\$15** charge purports to be only for heating and air conditioning during the off hours. Any claim for other uses, such as elevators, additional water, additional supplies and the like, are apparently being waived.

Respondent contends that the original lease was negotiated at a level below the prevailing loop charges due to the condition of the building. It was a warehouse originally and not suitable for office usage. The costs of remodeling were paid by the Respondent. Also, Respondent was the first tenant in the former warehouse. Respondent admits that when the lease was executed, the employees were not required to work double and triple shifts. The multiple shifts were first used at least two years prior to **1970**. But it was not until **1970** that Claimant began its billing for these charges.

The lease provides as follows:

(2) The lessor agrees:

D. To operate air conditioning equipment installed in accordance with the plans and specifications above mentioned.

E. To furnish between the hours of 8:00 a.m. to 6:00 p.m. daily, Monday through Friday and 8:00 a.m. to 2:00 p.m. on Saturday, not less than 72 degrees Fahrenheit of heat throughout the entire area; in the event lessee has a night crew working, heat shall be furnished in the area which the crew is working.

Paragraph G of the Outline Specifications, attached to the complaint as Exhibit A, provided that the lessor would:

G. Install year-around climatic controlled air conditioning system . . .

Respondent argues that this proves that the lease contemplated the use of night crews. There was no provision in the lease requiring Respondent to pay for the heating and air conditioning, even though later tenants did have leases which contained such provisions. Respondent further argues that the damages are uncertain and speculative and cannot be made a basis of recovery.

Claimant produced as a witness one Thomas F. Croke as a real estate expert in the management field. He testified that from his analysis he arrived at a charge of **\$30** per hour for 60,000 sq. ft.; that, in checking with others, he found that the charges ranged from **\$35** per hour for heating and **\$50** per hour for cooling after the normal operating hours; and that **\$15** per hour charged by the Claimant in this case was fair and reasonable. Other departments of the State and Federal government as well as other corporations paid this rate when they occupied the same building.

This claim is really one for additional rent based on use of heat and air conditioning not contemplated under the terms of the original lease.

The issue is whether or not the lease is ambiguous in regards to heating and cooling and, if so, can the

circumstances existing at the time of the lease be considered. **24 I.L.P. Landlord and Tenant Sec. 43** states:

There is no necessity to resort to extrinsic facts or circumstances in order to determine the intent of parties in executing a lease where such intent is clearly ascertainable from the lease itself.

In the case of *Launtz v. Kinlock Telephone Co.*, **239 Ill.App. 604**, the lessor agreed to furnish electrical current necessary to charge the lessee's electrical machines. The Court held that the lessor was not entitled to an increase rental on the ground that he had to run his generator seven hours a day longer than usual in order to charge lessee's machines due to their badly worn condition. Thus, a landlord doesn't necessarily have a right to increase rent when his burden is increased due to the use made by a tenant unless the lease so specifies or unless the lease is ambiguous.

The record is far from satisfactory in supplying proof that Claimant is entitled to the recovery which it seeks. The lease provides in Paragraph (2) E, Page **4**, for the hours that heat will be furnished. While the lease does not state the number of hours that air conditioning will be furnished, it would seem to be a natural assumption that the air conditioning hours would be the same as those requiring heat.

A computation of the period in which air conditioning was used for over ten (**10**) hours per day beginning in June, **1970**, is as follows:

1970	June	60 hours
	July	64
	August	80
	September	64
1971	May	44
	June	80
	July	102
	August	94
	September	93
Total . . .		681 hours

It is the Court's conclusion, based on the record, that the Claimant should be compensated only for the air conditioning hours as set forth above, and at **\$15.00** per hour for **681** hours, making a total of **\$10,215.00**.

We therefore enter an award for Claimant in the amount of Ten Thousand Two Hundred Fifteen Dollars (**\$10,215.00**).

(No. 6768—Claim denied.)

ROY R. TAEGER, Father of **SHARON TAEGER**, deceased, Et Al.,
Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed September 25, 1975.

KENNETH E. BAUGHMAN, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN**, Assistant Attorney General, for Respondent.

NEGLIGENCE—wrongful death. The burden rests upon Claimants to prove by a preponderance of the evidence that signs erected by Respondent to warn about the termination of a road were inadequate.

SAME—evidence. Where standard called for signs at specific intervals from the termination of a road, and where substantial compliance with those requirements exist, Claimant has not met the requisite burden.

PERLIN, C. J.

This wrongful death action arises out of an automobile accident which occurred on June **15, 1970**, on Highway **34** in Henderson County, Illinois. The State of Illinois is responsible for the construction, repair and maintenance of Highway **34**, and Claimant contends that the accident was proximately caused by the negligent failure of Respondent to provide adequate warnings that Highway **34** terminated at the accident site.

On June **15, 1970**, Roy Taeger, his wife Dianne, his son Lyle, and his infant daughter Sharon were proceeding westbound on Highway **34** to Burlington, Iowa, from Clinton, Illinois. They were unfamiliar with the high-

way. Roy Taeger was driving a **1966** Ford station wagon. The weather was clear and road conditions and visibility were excellent.

Highway **34** is a four lane, divided road with two lanes in each direction separated by a median approximately **40** feet wide. Just east of the accident site Highway **34** traverses a grade as it passes over Route **150**. The speed limit on the road was **65** miles per hour.

At the accident site Highway **34** ended with a tapered barricade which directed traffic off the westbound lanes and onto an exit ramp located on the west incline of the overpass over Highway **150**. The barricade consisted of a series of weighted barrels from which hazard markers extend to a height of about seven feet above the road surface. The barrels extended from the south edge of the westbound lanes and angled in a northwesterly direction across both westbound lanes to the intersection of the west edge of the exit ramp and the north edge of Highway **34**.

At the mouth of the exit ramp there was a speed control sign stating "Ramp Speed **30**."

Approximately **680** feet east of the gore of the exit ramp, four foot by four foot orange signs were placed on either side of the highway stating "Expressway Ends." Mounted just below these signs on the same signposts were smaller signs stating "Form Single Lane to Right."

Approximately **2,600** feet east of the gore was an informational sign along the right hand side of the road indicating to drivers the direction they were to travel.

Roy Taeger testified that he was proceeding westbound on Highway **34** in the right lane when the car and truck he was following began slowing down. He estimated that when he was about one mile from the bridge over Route **150** he pulled into the left hand lane

to pass the slower vehicles. He passed the car that had been immediately in front of him and had pulled approximately even with the truck when, near the top of the grade over 150, he saw the barrels across the westbound lanes of the highway. Taeger said that at the same time he noticed that there was traffic in front of the truck in the right lane which would prevent him from entering the right lane and exit ramp. He said he applied his brakes at this point, which he estimated to be about 500 feet from the barrels, and tried to negotiate the exit ramp curve at about **45** miles per hour. However his car struck the guard rail along the left side of the road, blew a tire, and rolled down an embankment along the side of the highway. Sharon Taeger, the 11-month old daughter of Claimant, was thrown from the car and killed.

Taeger testified that prior *to* the accident he had not observed any signs or traffic control devices indicating that Highway **34** was ending.

Jack Chick, an investigator hired by Claimant, testified that in the course of investigating this accident he traveled over Route 34 at the accident site three times. He said that he did not observe the barrels across the road until he was about half way across the bridge over Route 150, or about **500** feet from the barrels.

Harriett Knepp, the driver of the automobile which Claimant passed just before the accident, testified that she was traveling **50** to **55** miles per hour when passed by the Taeger vehicle. She said that she had driven past the accident site several times and that a driver could not see the barrels at the end **of** the highway until he had almost cleared the crest of the bridge over Route 150.

Claimant introduced into evidence Standard 2316-2 of the State **of** Illinois Manual **of** Uniform Traffic Control Devices relating to application of traffic control

devices for highway construction and maintenance. The Standard provides, in essence, that where a four-lane, divided highway is undergoing maintenance or construction which requires a lane closure specified warning signs must be placed along both sides of the road at specified intervals. The Standard requires warning signs 500 feet from the gore of the road, 1000 feet from the gore, and 1,500 feet from the gore. In addition, a directional sign is required 2,000 feet from the gore, and additional warning signs are specified at points 2,600 feet and 5,000 feet from the gore.

Claimant also introduced into evidence the introductory portion of the Manual relating to Standard 2316-2, which provides in part:

This section sets forth basic principles and prescribes minimum standards to be followed in the design, application, installation and maintenance of all types of temporary traffic control devices required for road construction and maintenance operations.

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The prescribed standards were developed primarily as the minimum desirable application for State maintained highways.

Charles Dykeman was the driver of the truck that Taeger passed immediately prior to the accident. The written statement of Dykeman was admitted into evidence by stipulation, and provided, in part:

I observed the Taeger vehicle come up behind me in my outside rearview mirror and pass me while I was on the bridge over U.S. Route 150. I wondered why he was passing me and at such a high rate of speed, which I would estimate at somewhere between 65 to 70 miles per hour. I honked my horn at him to get him to slow down as he approached the curve, however, when he did apply his brakes, it was much too late to avoid the accident. The car was not weaving or bobbing, but it had just passed me on the bridge and prior to the curve. I feel the car was already into the curve (exit ramp) before the driver attempted to slow down. The vehicle struck the end of the guard rail and appeared to go straight up into the air and possibly land on the top, although I could not see because it dropped into a ditch, which blocked my view I was under the impression that the driver may have dozed off momentarily before the curve. There was no other vehicle between me and the Taeger vehicle. I thought that when he passed me on the bridge that if he didn't slow down, he would hit the rear of the brown 1960 Oldsmobile that was previously in front of me.

Respondent introduced into evidence photographs of Highway **34** taken at various distances east of the barricade. These photographs show that the very tops of the hazard markers atop the barrels became faintly visible to westbound motorists about **1,900** feet east of the gore of the highway. At a point about **950** feet east of the gore, the barrels and markers are plainly visible to westbound traffic.

Carroll Holloway, an employee of the Illinois Department of Transportation, was an Assistant Field Traffic Engineer responsible for the signing along Highway **34** at the time of the accident. He testified that Route **34** was not under construction or maintenance on June **15, 1970** and that the barrel barricade had been in place since December, **1965**. He also stated that the "Expressway Ends" signs located approximately **650** feet from the gore of the highway were within the normal range of placement for such signs.

Robert Campbell, the Illinois State Trooper who investigated the accident, testified that as he approached the accident scene from the east the barrels became visible as he approached the eastern edge of the bridge over Highway **150**.

Claimant contends that the State did not provide adequate warning devices at approaching the end of Highway **34**. Claimant urges strongly that the failure of Respondent to comply with Standard **2316-2** of the State of Illinois Manual of Uniform Traffic Control Devices is evidence of negligence. Respondent replies that that Standard is not applicable to the instant situation, that the warning signs provided along Highway **34** were adequate, and that the proximate cause of the accident was the negligent failure of **Roy** Taeger to observe and heed the signs indicating the end of the highway.

In *Emm v. State*, **25 Ill.Ct.Cl. 213**, this Court held

that the State must keep roadways under its jurisdiction and control in a reasonably safe condition for the purpose to which the portion in question is devoted. The Court added, “. . . the placing of adequate signs warning of the conditions to be met fulfills the obligation of the State to the users of the highway.” The burden rests upon Claimants to prove by a preponderance of the evidence that the signs erected by Respondent were inadequate to warn of the termination of Highway **34**; that Claimants were free of contributory negligence; and that the negligence of the Respondent was the proximate cause of the accident.

Standard **2316-2** of the Illinois Manual of Uniform Traffic Control devices is not conclusive of either the type or placement of the signs which should have been erected at the termination of Highway **34**. The Standard is, by its own terms, applicable to the erection of temporary traffic control devices where a road is under maintenance or construction. Carroll Holloway, a traffic engineer employed by Respondent, testified that the Standard was not applicable to the instant situation. However, even if the Standard is considered as indicative of what does constitute adequate warning of the termination of Highway **34**, see *Merchant's National Bank of Aurora v. Elgin, Joliet and Eastern Railway Co.*, **49 Ill.2d 118**, 273 N.E.2d 809, 812, we find that the State did not so deviate from the Standard as to be chargeable with negligence.

Standard **2316-2** calls for placement of signs warning of a lane closure at 500-foot intervals, beginning at a point 1,500 feet from the gore of the road; a directional sign **2,000** feet from the gore; and warning signs at points **2,600** feet and **5,000** feet from the gore.

At the termination of Route **34**, Respondent placed hazard markers which were clearly visible at a point

950 feet east of the barricade. Photographs introduced into evidence show that these hazard markers began becoming visible to westbound traffic approximately **1,900** feet from the barricade. Further, **680** feet east of the gore, four foot square orange warning signs were placed on each side of the highway stating, "Expressway Ends." Under these signs were smaller signs stating, "Form Single Lane to Right." Finally, **2,600** feet east of the gore was an informational sign along the right side of the road which indicated to drivers the direction westbound traffic was to take.

These signs and hazard markers substantially complied with the requirements of Standard **2316-2** and provided adequate warning of the termination of the highway.

Further, Roy Taeger testified that he did not see any of the informational or warning signs along Highway **34**, and that he first became aware of the existence of the barricade when he was about 500 feet from the end of the highway.

The Court is convinced that it was his failure to observe and heed these clearly visible signs which was the proximate cause of this accident.

The Court regrets this tragic occurrence, but the evidence shows that Respondent did provide adequate warning signs indicating the termination of Highway **34**, and that the negligence of Roy Taeger proximately caused the accident.

This claim is therefore denied.

(No. 6832—Claim denied.)

CONNIE J. PARKINSON, EXECUTRIX OF THE ESTATE OF HARRY C. PARKINSON, DECEASED, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 29, 1976.

KATZ, McANDREWS, DURKEE & TELLEN, Attorneys
for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G.
OLSON, Assistant Attorney General, for Respondent.

HIGHWAYS—wrongful death. Claimant bears the burden of proving by a preponderance of the evidence that Respondent breached its duty of reasonable care; that the breach was the proximate cause of the death of her decedent; and that her decedent was in the exercise of reasonable care for his own safety.

SAME—evidence. Where Claimant proved State had actual notice of extreme difference in height of shoulder and road, and failed to correct same, Claimant carried burden of proof.

SAME—contributory negligence. Where evidence indicates that Claimant's deceased, after leaving roadway, re-entered road, and did not stop in a reasonable time before striking another car, contributory negligence exists and the State is not liable.

PERLIN, C. J.

Claimant is the executrix of the estate of her late husband, Harry C. Parkinson. In that capacity she seeks damages for the wrongful death of her decedent, who was killed in an automobile accident on October 21, 1971. The accident occurred on Illinois Highway 67, which was under the jurisdiction and control of Respondent at the time of the occurrence. Claimant contends that the death of Harry C. Parkinson was proximately caused by the failure of Respondent to properly maintain the road and the adjoining shoulder at the accident site.

Illinois Highway 67 is a two-lane, undivided blacktop road which runs in a generally northerly and southerly direction. The accident took place just over the crest of a hill, about one and one-quarter miles south of Preemption, Illinois. The road had been paved in such a fashion that immediately over the crest of this hill the highway narrowed abruptly from a width of 24 feet to a width of 21 feet, eight inches. This appeared to repre-

sent a pattern in the paving of the highway for some distance in either direction. That is, at the crest of each hill the pavement narrowed, and then widened as it went up the succeeding hill. Further, where the pavement narrowed at the accident site the shoulder of the road had eroded, so that there was a trench approximately eight inches deep running along the west edge of the narrowed pavement.

The eroded condition of the shoulder was shown to have existed for over one year prior to the date of the accident and had been reported to the State of Illinois on at least two occasions after cars had gone off the highway and into the trench. There were no signs posted to warn southbound motorists of the narrowing of the pavement or of the drop-off at the shoulder of the road.

The deceased was southbound on Route 67 at about 4:30 p.m. The road was clear and dry, and visibility was unobstructed. The speed limit at the accident site was 65 miles per hour. The Court must assume that the deceased was familiar with the condition of the road, as he had resided in the general vicinity for a number of years.

As the Parkinson car cleared the crest of the grade about one and one-quarter miles south of Preemption, the right wheels of his car went off the narrowed road and into the trench formed by the eroded shoulder. Based upon the expert testimony and photographic evidence introduced at trial, it appears that his vehicle traveled approximately **57** feet in the trench, came back onto the road and traveled about **225** feet in the southbound lane, and then crossed into the northbound lane and traveled about **135** feet before striking head on a *car* driven by one Barbara Zeigler. Both Parkinson and Ms. Zeigler were killed instantly in the collision.

James L. Esters, an Illinois State Trooper who con-

ducted an investigation at the accident scene, testified that he had observed that the western edge of the pavement was chipped for some distance where Parkinson's car left the road. Esters said that he believed that this was caused by the right wheels of Parkinson's car striking the edge of the road as Parkinson tried to bring the car back on the pavement.

The deceased was **32** years old at the time of his death and left surviving a wife and three small children. He was a farmer and had earned **\$22,000** in **1970**.

Parkinson's widow, his father-in-law, and his sister, all of whom had driven with the deceased on numerous occasions prior to the accident, testified that he was a cautious, safe driver who typically exercised reasonable caution while driving.

James Baker, a traffic engineer, testified on behalf of Respondent. Baker said that based upon his examination of photographs of skid marks left by Parkinson's car, and the known weight, direction and speed of the vehicles involved in the collision, he believed that Parkinson's car was travelling about 60 miles per hour when it struck the Zeigler car. He also estimated that Parkinson had been travelling approximately **73** miles per hour when he first applied his brakes after getting his car back on the pavement.

The State owes a duty to those using its streets and highways to keep those roads in a reasonably safe condition. *Schuck v. State*, 25 Ill.Ct.Cl. 209. This duty extends to properly maintaining the shoulders of a highway for the uses for which they are reasonably intended. *Lee v. State*, 25 Ill.Ct.Cl. 29; *Welch v. State*, 25 Ill.Ct.Cl. 270. To recover in this action Claimant bears the burden of proving by a preponderance of the evidence that Respondent has breached its duty of reasonable care; that the breach of duty was the proximate cause of the death

of her decedent; and that her decedent was in exercise of reasonable care for his own safety at the time of the accident.

The record does tend to establish that the State of Illinois did not utilize reasonable care in maintaining Highway 67 at the accident site. Not only did the pavement narrow at the crest of a hill, but an eight inch deep trench was permitted to form at the edge of the pavement where the shoulder had eroded. We have previously ruled that the State is not bound to maintain a shoulder in the same condition as the paved surface of a highway, and that a difference of a few inches between the height of the pavement and the shoulder is not negligence per se. See *e.g. Sommer, et al. u. State, 21 Ill.Ct.Cl. 259; Howell u. State, 23 Ill.Ct.Cl. 141*. Here however the combination of the narrowed pavement and the extreme difference in the height of the pavement as compared to that of the shoulder constituted a dangerous condition. See *Mallory v. State, 24 Ill.Ct.Cl. 236*.

Claimant has further proven that the State had actual notice of this condition for over one year prior to the accident, and that the State neither corrected the situation nor placed warning signs in the area. In failing to correct a dangerous condition on its highway, of which it had actual notice for a substantial period, the State appears to have breached its duty of reasonable care in maintaining the road.

We further find that the State's breach of duty was a proximate cause of the death of Harry Parkinson.

The more difficult issue is whether Claimant has proven that Harry Parkinson was in the exercise of reasonable care for his own safety at the time of the accident. Testimony was introduced by Claimant as to the careful driving habits of her decedent which is probative of the issue of whether he used due care in the instant situation.

However, Respondent urges strongly that Harry Parkinson was contributorily negligent, and after a careful review of the record, the Court must agree.

We first note that Highway **67** in the area of the accident scene narrows repeatedly at the crests of hills, and it is not unreasonable to assume that Parkinson, who lived in the locality for a number of years, was aware of this fact.

Moreover James Baker, a highway engineer who testified on behalf of Respondent, stated that after Parkinson brought his car back on the pavement, it traveled approximately **225** feet in the southbound lane, crossed over into the northbound lane, and traveled an additional **135** feet in that lane before striking the Zeigler car at 60 miles per hour. There does not appear to be any reasonable explanation for Parkinson's failure to stop, or at least slow his car, after he had gotten it out of the trench.

We have carefully examined photographs of Parkinson's car taken after the collision which show that both his right front and right rear tires were inflated. Thus, they were not blown when his car went off the road and could not have caused Parkinson's car to go out of control once it was back on the pavement. Clearly Parkinson had time to stop or significantly slow his car once it was back on the road, yet he continued for approximately **360** feet before striking the Ziegler car. In failing to stop or slow his car, we think he failed to act as would a reasonably prudent person under the circumstances. In this connection we also note the testimony of James Baker that photographs of the skid marks left by Parkinson's car indicated that he was travelling in excess of the speed limit when he first applied his brakes.

The contributory negligence rule is often harsh in application, but it is a rule which this Court is bound to

recognize. The Court regrets this unfortunate occurrence but is of the opinion that this claim must be denied.

(No. 6840—Claimant awarded \$3,500.00.)

CHARLES E. BREWER, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion Filed November 24, 1975.

PEFFERLE, MADDOX & GRAMLICH, by CHARLES J.
GRAMLICH, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W.
FELDMAN, Assistant Attorney General, for Respondent.

CONTRACTS—bailment. Although regulations of State Fair deny responsibility for damage to exhibits, where Claimant delivered coin collection to State Fair, which collection was stolen therein, a bailment contract existed between Claimant and Respondent.

SAME—same. The State as bailee must exercise such care as an ordinarily or reasonably prudent man would take of his own goods of like character under similar circumstances.

BURKS, J.

Claimant brought this suit against the State for the value of a coin collection which he exhibited at the **1971** Illinois State Fair and which was stolen or disappeared from the exhibit area. The value of the lost collection was **\$3,929.30**, according to the complaint.

Claimant argues that a mutual benefit bailment was created, and that it was the duty of the State to protect the exhibit against theft. Respondent argues that the State cannot be held responsible as an insurer of exhibits at the State Fair, and cites the rules and regulations pertaining to exhibitions at the State Fair which purport to contain an express denial of responsibility for loss or damage to exhibits or any part thereof. The following is a brief summary of the facts:

The Claimant, Charles Brewer, is an elderly man

whose hobby was coin collecting. He had exhibited his coin collections at the Illinois State Fair for a number of years prior to **1971** and won several awards.

Brewer set up his exhibit on August **10, 1971**, in the Exhibition Building on the Illinois State Fairgrounds at a spot designated for coin exhibitions by the State Fair Agency. Between **9:00** p.m. Sunday, August **22, 1971**, and 8:15 a.m. Monday, August **23, 1971**, certain portions of Mr. Brewer's collection disappeared.

Claimant arranged the exhibit as he had desired it, "to make it look attractive," and then observed while an employee of the Respondent locked the case. The Claimant never had a key to his exhibit. He testified that he could not even go behind the showcase unless he was accompanied by an authorized employee of the State. The aisle behind the showcase was "off limits," Claimant said, and all exhibitors were treated the same.

There was no evidence in this case as to what happened to Mr. Brewer's coin collection other than it disappeared over the weekend. Yet, it seemed clear to the manager of the State Fair, Bob Park, that Claimant's property was stolen. Mr. Park's letter to the Claimant, dated October **14, 1971**, reads in part, "Certainly all of us at the Fair regret this *theft* very sincerely and I will be glad to talk to you further about the problem since it seems that *our guard system left much to be desired.*"

Again on January **26, 1972**, the manager of the State Fair, Mr. Park, wrote the Claimant acknowledging that Claimant's loss was due to theft, a fact confirmed by the testimony of Mrs. Vera Marvel, superintendent of the hobbies displays. She said the back of Claimant's display case was broken into and the lock was pried off. Both Mrs. Marvel and Mr. Denton who was manager of competitive events at the Fair "corrobo-

rated Mr. Brewer's statement that security was extremely weak in this particular building at the Fair that year," as Mr. Park acknowledged in his testimony at the hearing.

The manager of the Fair also testified that, in his opinion, the State Fair Agency had some responsibility for Claimant's loss under *Ill.Rev.Stat., Ch. 127, §405*, which reads as follows:

The State Fair agency is empowered to police the State Fair Grounds, maintain and preserve order thereon, and protect exhibits from theft, injury or destruction.

Mr. Park's second letter to the Claimant expressed his regret that there was no item in his budget to handle a reimbursement for Claimant's loss and advised Mr. Brewer to file his claim in this Court. Mr. Park added, "I feel there is merit in your case."

This Court cannot predicate liability of the State upon the generous remorse felt by representatives of the State Fair Agency toward Claimant's loss. However, we do regard their testimony and letters as tantamount to a Departmental Report as contemplated by our Rule 14. From this *prima facie* evidence, which was not effectively refuted, we conclude that Claimant's coin collection was stolen from its showcase in the Exposition Building due to the State's negligence in admittedly failing to provide "reasonable protection" for Claimant's exhibit in 1971. As Mr. Park testified, "Evidently that reasonable protection was lacking that year."

We accept the definition of the term "bailment" as stated in Respondent's brief and as quoted in *Z.L.P. Bailments* §2.

The term 'bailment' has been defined as the delivery of goods for some purpose under a contract, express or implied, that after the purpose has been fulfilled they shall be redelivered to the bailor or otherwise dealt with according to his directions or kept until he reclaims them.

We do not accept Respondent's novel theory that, in

the case at bar, there was no contract of bailment, either express or implied, since there certainly was a transfer of possession of Claimant's personal property to the Respondent without transfer of ownership. There was also considerably more than the implication of a contract of bailment between the parties, so we need not dwell on the two cases cited by the Respondent supporting the general rule that the State cannot be held liable for breach of an implied contract. That rule as applied in *Dutton v. State*, 16 Ill.Ct.Cl. 64, was on a claim for personal services performed and in no way analogous to the case at bar. Nor do we believe it was appropriately relied on in *Schwemer v. State*, 19 Ill.Ct.Cl. 149, wherein the Claimant, an insane person, lacked the capacity to enter into a bailment contract.

In the case at bar, Claimant received a written invitation from the Respondent to display his exhibit at the 1971 State Fair. The invitation was clearly stated in the "General Managers Foreward" of the booklet Claimant received through the mail (Claimant's Exhibit 5) which contained the rules and regulations for exhibitors adopted and promulgated by the State Fair Agency pursuant to *Ill.Rev.Stat., Ch. 127, §403*.

Claimant accepted the State's invitation, together with its rules and regulations, by entering his coin collection in the "Hobby Division" of the State Fair as he had done in prior years. The specific category covering Mr. Brewer's collection is described as "Antiques and Numismatics, Lot 135."

Claimant was charged a registration fee of \$2.50 as required by the rules. Exhibits such as Mr. Brewer's were accepted for their educational purposes. In return for the fee paid and for the benefits derived for the fairgoers, the State Fair Agency awarded prizes to various exhibitors if their exhibits merited an award. Per-

sons exhibiting at the fair were thus given the opportunity to have their collection compared with those of others, the publication of their ownership of such collections, and the possible esteem of their fellow citizens and hobby enthusiasts. As the booklet states, the exhibitors “provide the color and taste so vital and such an integral part of a successful fair.”

From the above facts, we find that a contract of bailment was created for the mutual benefit of the parties. The fact that the contract was not expressed in a single written document is immaterial, although such a document might have removed all doubts as to the rights, duties, and obligations of the parties.

Here, those rights and obligations must be governed by the State’s rules and regulations for exhibitors, accepted by the Claimant, interpreted in the light of the following general rule applicable to mutual benefit bailments found in *I.L.P. Bailment* §14:

In the absence of special contract, where the bailment is for mutual benefit, the bailee [the State] must exercise ordinary care or diligence with respect to the subject matter of the bailment, or, in other words, the State must exercise such care as an ordinarily or reasonably prudent man would take of his own goods of like character under similar circumstances. In determining what constitutes proper care of property by a bailee for mutual benefit, the nature and value ~~of~~ the property, the means of protection possessed by the bailee, the relationship of the parties, and other circumstances must be considered.

Applying the above rule to the case at bar, we believe that the “nature and value” of a coin collection merits a higher degree of care by the bailee than many other types of exhibits having less intrinsic value or, because of their size or weight, are not so likely to be stolen. Moreover, we cannot excuse the bailee on the grounds that it did not possess adequate “means of protection.”

We have previously concluded, from the testimony of Respondent’s agents, that reasonable protection for

Claimant's exhibit was lacking. We must turn then to the rules and regulations if Respondent is to be saved from liability for Claimant's loss. The pertinent rules are 7 and 13, which read:

7. No responsibility shall be attached to the State of Illinois, State Fair Agency or employees thereof for loss or damage to exhibits or any part thereof.

Every precaution will be used in care of handling of exhibits including continuous police protection.

13. All entries must be removed from building Monday, August 23rd. The State Fair will not be responsible for articles not picked up Monday, August 23rd.

The disclaimer of responsibility in the first part of Rule 7, standing alone, would appear to dispose of this controversy summarily in favor of the Respondent. But it does not stand alone, and such disclaimers of liability in a bailee's contract must be strictly construed against the bailee. *I.L.P. Bailments* 413.

The second part of Rule 7 and the implication to be drawn from Rule 13 are not compatible with the disclaimer of liability. The State's promise of "continuous police protection" and that "every precaution will be used in the care of exhibits" obviously were not fulfilled in Claimant's case.

The statement in Rule 13 that "the State Fair will *not* be responsible for articles *not* picked up Monday, August 23rd," implies that it *would be* responsible for loss prior thereto. This implication contradicts the disclaimer of responsibility in Rule 7 and creates an ambiguity in Respondent's rules.

Even if we could in good conscience find that there is more than one reasonable interpretation of the inconsistent language in question, the doubt must be resolved against the Respondent, since the Respondent prepared the rules and regulations and chose the language. This venerable rule of contract construction, firmly established in Illinois, is restated in *I.L.P Contracts* §221 as follows:

Words which are ambiguous or of doubtful construction are to be construed most strongly against the party who prepared the contract, for the reason that he chose the language and is responsible for the ambiguities in his own expression.

This rule obtains not only in grants, but extends in principle to all other engagements and undertakings; and in construing reservations or conditions inserted in a contract for the benefit of the party who makes them, where there are clauses which are doubtful or ambiguous, that construction will be adopted which is least favorable to the party making them.

We note, parenthetically, that the State's promise of "continuous police protection" for exhibits was deleted from its rule book for the following year, 1972, according to the testimony of the manager of the fair.

Based on the above stated "resolve doubts against the draftsman" rule, and upon the preponderance of evidence that Respondent failed in its promise to provide "continuous police protection" for Claimant's exhibit, we find the Respondent liable for the theft of Claimant's coin collection over which the State assumed exclusive custody and control and kept the only keys. These facts distinguish the State's duty in the case at bar from, for example, the duty of a local police department in undertaking to protect private homes within its jurisdiction. Certainly the police are not insurers of such homes nor of the safety of individual citizens.

The facts also distinguish this case from *Wall v. Airport Parking Co.*, 41 Ill.2d 506, holding that a bailment is not created where an automobile is self-parked in a lot and the owner retains the keys. Here the State retained the keys.

We do not believe that the State Fair intended to be, or should be, an insurer of all exhibits. We merely hold that the facts in this particular case justify a finding that the State Fair Agency negligently failed in its assumed obligation to protect Claimant's coin collection from theft.

The question of determining the exact value of Claimant's loss is more difficult for the Court than in finding liability. The only witnesses who testified supported Claimant's Bill of Particulars showing that the value of his lost coins was **\$3,929.30.**

In addition to the testimony of the Claimant and his wife, the claimed value of Claimant's loss was supported by the testimony of Ronald M. Murphy, a full time coin and art dealer in Springfield, an expert in coin collection, who had exhibited his own coin collections at the State Fair for the last 18 years. Mr. Murphy, a life long resident of Springfield, testified that he was familiar with Claimant's coin collection, had examined it in prior years, and saw it on display next to his own exhibit at the **1971** fair. Mr. Murphy knew that the Claimant had certain sets of coins in there. Although he didn't study Claimant's exhibit coin by coin to know the condition of each individual coin, Mr. Murphy said he would swear that Claimant had each and every one of the sets listed. Mr. Murphy added, "I do know that, from reading the list of items taken, that there was no doubt other items taken that were not on the list." Claimant left out several rare coins he did not purport to own.

The weakness in Claimant's evidence as to value of his lost coins is that he did not have an inventory of his collection prior to his loss and had to compile a list of his coins from memory with the aid of his wife. As Chief Justice Perlin said in *Giedraitis v. State*, **26 Ill.Ct.Cl. 419, 425**, "This Court has held that it is fundamental

that the burden of proving the element of damages is upon Claimants.” We said in *Frega v. State*, 22 Ill.Ct.Cl. 399,400: “The proof required to establish damages must not be remote, speculative, nor uncertain.” We do not interpret these rules to mean that a Claimant is entitled to nothing unless he can prove the amount of his loss down to the exact dollar. Many insureds do not have an inventory of their household contents prior to a fire loss, and their records of purchase may also be lost in the fire. Reputable insurers will honor their claim on the best evidence available, as we must do in the case at bar. In *Giedruitis* we denied a portion of the claim relating to the value of a boat and its accessories. Claimant had paid \$500 for the boat plus a promise of medical services to the seller. Claimant had recovered \$500 for loss of the boat from his insurance company but could not remember how much medical service he had since rendered the seller. Obviously, such faulty memory could not be regarded as admissible evidence sufficient to support an additional award.

Fortunately, the Claimant here was very familiar with his coin collection, and his expert witness, Ronald Murphy, a long established coin dealer in Springfield, had a general knowledge of the coins in Claimant’s collection.

Each of Claimant’s lost coins, 199 in all, were listed in his Bill of Particulars with the value of each coin as shown in Claimant’s Exhibit 5, *A Guidebook of United States Coins, 25th Edition, 1972*, a book which Mr. Murphy had testified was “the bible” of the coin collection hobbyist. Respondent does not dispute the authority of this book, but points out the extreme variance in the listed values of each coin, depending on their condition. The guidebook “bible” lists different values for the same

coin under its condition described as “fair, good, very good, fine, very fine, extremely fine, or uncirculated.”

A small group of Claimant’s coins were shown as “uncirculated” or of uncirculated quality. A few were listed as “good” and most were priced as being “very fine” or “extremely fine.” Although the exact condition of each coin was exclusively within Claimant’s knowledge, we believe his evaluations are generally supported by the fact that his collection won three blue ribbons at the 1971 State Fair before his coins were stolen.

We take notice that long experienced coin collectors, as Claimant was, pride themselves on the condition of their coins; that Claimant’s collection exhibited at the State Fair was in competition with other coin collectors throughout the State; and that Claimant’s collection was regarded as best in three categories by the judges at the fair.

While we also know that coin collections tend to increase rather than depreciate in value, we have taken into account that there was some degree of uncertainty in Claimant’s proof of loss based on his memory. He was, as Respondent points out, somewhat confused in his testimony under cross-examination. Considering Claimant’s age, his confusion could be attributed to excitement under the unusual circumstances of a trial. In any event, it is the judgment of this Court that Claimant is entitled to an award in the sum of \$3,500, an amount approximately 10% less than the amount claimed, due to the degree of uncertainty we find in his proof of loss.

Claimant is hereby awarded the sum of Three Thousand Five Hundred Dollars (\$3,500) for his loss of personal property.

(No. 6898—Claim denied.)

**SAVIN BUSINESS MACHINES, Claimant, *us.* STATE OF ILLINOIS,
Respondent.**

Opinion Filed October 24, 1975.

ARTHUR SPIRO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; for Respondent.

BURKS, J.

This matter is now before the Court for a ruling on Claimant's petition for rehearing on the Court's opinion filed June 5, 1975, in which we denied this claim by a summary judgment. 30 *Ill.Ct.Cl.* 612. We have carefully considered Claimant's petition with Respondent's answer, and Claimant's further reply filed September 29, 1975.

In Claimant's well drafted petition and its reply to Respondent's objections, we fail to find any significant facts or authorities cited that we previously overlooked or misapprehended which would alter the conclusion in our opinion as filed.

Recognizing, as we do, the unfortunate financial loss to the Claimant, it is not within the province of this Court to alter the tax laws of this State, the remedies prescribed by our statutes, nor the interpretations placed upon such statutes by our reviewing courts. The same, of course, is true of any executive officer charged with the duty of assessing and collecting franchise taxes payable by foreign corporations.

The fact that John W. Lewis, Secretary of State, suggested that Claimant file for a refund in this Court, or that Mr. J. Mills of the Secretary's office advised Claimant of the consequences of failure to pay the franchise tax in the amount erroneously assessed, did

not create any new rights or remedies for the Claimant which were not provided by statute. "Everyone is presumed to know the law." *I.L.P.Evidence* §24. This rule applies to foreign corporations doing business in a sister state, as our courts have held in numerous cases. Hence, Claimant's alleged reliance upon instructions received from the office of the Secretary of State can have no legal effect on this claim.

Claimant's argument that it paid the tax involuntarily and under "legal duress" is without merit, as we pointed out in our opinion analogizing the two cases cited by the Claimant in support of this contention, *Snyderman u. Isaacs*, 31 Ill.2d 193, and *Alton Light & Traction Co. u. Rose*, Ill.App. 83, 86.

In both of the above cases cited by the Claimant, the tax refund was denied. In *Snyderman* the tax had been paid under the 1961 amendments to the Retailers' Occupation Tax and the Use Tax Act, which were subsequently held invalid. Yet, the taxpayer was denied a refund because the tax erroneously paid was not paid under protest in accordance with the procedure for recovering such tax prescribed in these Acts. Referring to the said proper procedure, our Supreme Court said at page 196:

In these provisions there is recognition of the possibility that the State may be *unjustly enriched* through the retention of taxes erroneously paid, and a remedy has been provided.

The above statement justifies the State's retention of the \$9,060.53 which it was overpaid on Claimant's 1970 franchise tax, and was thus "unjustly" enriched by Claimant's failure to know and follow the legal procedures for obtaining a refund as prescribed by law.

The *Alton* case on which Claimant relied was decided in 1904, before our "protest statute" first became law in 1911, as we stated in our opinion. Even so, the

Court denied a refund, saying at page 85, "The mere fact that a tax was paid unwillingly, or with complaint, is of no legal importance." The reference in *Alton* to a notification "equivalent to a reservation of rights" not only fails to apply to the fact before us, but is no longer controlling in the light of existing statutes.

Finally, we are not impressed with the contention that Claimant is being made to suffer by the fault of the Respondent, and due to no fault of the Claimant. It was Claimant's long delay in filing its 1970 Annual Report, eight months after the statutory deadline, that set in motion the chain of events which resulted in Claimant's overpayment of taxes. Even then, the statute provided a remedy which Claimant failed to follow.

For the reasons stated above and in our prior opinion, Claimant's petition for rehearing is denied and this claim is dismissed.

(No. 7015—Claimant awarded \$4,850.00.)

J. T. BLANKENSHIP and ASSOCIATES, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 22, 1975.

HOULT, HOUSE, DEMOSS & JOHNSON, by JERRY B. SMITH, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

COURT OF CLAIMS—authority. Where an appropriation for a project has lapsed and funds in excess of the amount of the lapsed appropriation are owed for services properly performed on the project, an award may be made against the State only to the extent of the lapsed appropriation.

PERLIN, C. J.

This is an action to recover the sum of \$14,250.00 for engineering services performed by Claimant in con-

nection with several construction contracts at the Giant City State Park.

The facts are not in dispute. On August 8, 1968, Claimant entered into an engineering services agreement with the Department of Conservation of the State of Illinois. Under the terms of that contract, Claimant was to provide engineering services required for the construction of water mains, pumping stations and an elevated storage facility serving the Giant City State Park. The pertinent provisions of the contract are as follows:

Compensation of Associate Engineer:

It is agreed that our commission shall be based either upon **5%** of an estimated cost of **\$255,278.00**, which is **\$12,762.00**, or **5%** of the actual cost of construction, whichever is lesser. It is agreed that the Supervising Architect be given a revised final estimate upon completion of drawings and specifications and prior to advertising for bids. If this estimate is greater than the original estimate, the associate fee will be adjusted as approved by the Supervising Architect and paid on the basis of the foregoing percentage applied to this approved revised estimate, or to the actual cost of construction, whichever is the lesser.

Special Duties of Associate Engineers:

In addition to the services above to be compensated for as a percentage of the construction cost, we as associate agree to provide such additional services, as may be needed or required and/or requested by the Supervising Architect on a cost reimbursable basis (reimbursable expense over base fee). . . . These services shall include as necessary for design, detailed surveys, subsurface explorations and soil investigations, aerial photography, full-time resident supervision, and construction layout work . . . In the event that full-time resident supervision and/or construction layout work shall be required, this work shall be handled under a separate contract.

Payment for Special Duties:

The total fees for Special Duties outlined above shall not exceed **\$7650.00**, provided that if it appears, after the services have begun, the cost of needed special duties will be greater than the sum specified, we will not proceed with services costing more than this sum without approval of the Supervising Architect.

Subsequent to the execution of this agreement, the Department of Conservation acquired a tract of property adjoining the park, on which Claimant was asked to provide additional water lines. Various other changes were ordered in the scope and nature of the work,

including the addition of an observation deck under the elevated storage facility. In addition, Claimant was requested by the Department of Conservation to provide full-time resident supervision services under the "Special Duties" provision of the contract.

At a pre-construction conference held on August 7, 1970, it was orally agreed between Claimant and representatives of Respondent that Claimant would receive additional compensation for these additional services either through change orders or additional contracts. However, Respondent never prepared additional contracts as promised, and no change orders of sufficient magnitude to cover the additional costs were ever processed.

Due to the foregoing changes the total construction cost of the project was **\$343,220.00**, and Claimant's fee for engineering services was **\$31,338.06**.

Claimant has been paid the sum of **\$17,087.26**, and claims a balance due of **\$14,250.80**. Of this sum, **\$7,356.10** is a charge for resident engineering supervision services. Bills for the balance were presented to the Respondent on June 13, 1972, and again on October 17, 1972, but were not paid.

Funds for this project were appropriated to the Department of Conservation in a lump sum, and all have been expended except the sum of **\$4,850.00**, which lapsed on September 1, 1972.

John Blankenship, the Senior Partner in the firm of J. T. Blankenship and Associates, testified that following the pre-construction conference on August 7, 1970, he made several requests of Russell Brotherson of the Supervising Architect's Office for a separate contract to cover his duties and compensation under the Special Duties section of the original contract, but that no new contract was ever submitted to his firm.

Roy Geiselman, an employee of the Department of Conservation of the State of Illinois, testified that it had always been the intent of the Department of Conservation and the Office of the Supervising Architect that Claimant be paid for the services provided. Geiselman further stated that the work performed by Claimant was satisfactory, and that the charges therefor were proper and reasonable in all respects.

Geiselman said that it was not the fault of the Claimant that a change order was never processed. He said that the Office of the Supervising Architect "possibly could have been delinquent in processing the change order." Russell Brotherson agreed that delay in the Office of the Supervising Architect resulted in change orders not being processed. Brotherson further indicated that had change orders been processed in a timely manner, monies to pay for the change orders could have been released from the general fund for the project, through "shifting around" of the funds.

It thus appears that Claimant performed substantial services for Respondent not contemplated in the original contract between the parties, for which Claimant has not been paid because the Office of the Supervising Architect neglected to promptly process change orders, and to supply Claimant with an additional contract as called for in the original contract. All but the sum of **\$4,850** of the original appropriation for the project has been expended, and the balance of the appropriation has since lapsed.

The issues thus raised is whether, where an appropriation for a project has lapsed and funds in excess of the amount of the lapsed appropriation are owed for services properly performed on the project, an award may be made against the State in excess of the lapsed appropriation.

Respondent does not contest an award to Claimant of \$4,850.00, the lapsed unexpended portion of the appropriation, but argues that the State is without authority to pay the balance of the claim as the full appropriation has been expended. Respondent contends that the evidence shows that had appropriate change orders or an additional contract been properly processed by the Office of the Supervising Architect, the full fee claimed could have been paid before the funds were expended for other purposes.

The Illinois Constitution of 1970, as did its predecessors, vests the power to authorize the expenditure of State funds exclusively in the General Assembly. Article 8, Section 2, provides:

The General **Assembly by law** shall make appropriations for all expenditures of public funds by the State . . . appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year.

Further, *Ill. Rev. Stat., Ch. 127, 9166, states:*

No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

These constitutional and statutory provisions are designed to protect the State Treasury from unreviewable expenses. It is clear that the Court of Claims is without authority to make an award in violation of the foregoing constitutional and statutory provisions. In *Fergus v. Russell*, 277 Ill. 20, 25, the Supreme Court said:

The Court of Claims is a statutory body not provided for in the Constitution, and its action can have no effect upon the power of the legislature to pay claims against the State. If the legislature has no such power in any case, favorable action by the Court of Claims would not give the legislature power to pay such claim by making appropriations therefor. If it has the power to pay claims, it cannot be deprived of it by unfavorable action on such claims by the Court of Claims. The power or lack of power to appropriate money to pay claims depends upon the Constitution and not upon the action of the Court of Claims.

We have thus consistently denied claims for monies due from the State which are in excess of funds appropriated for the project. *Schutte and Koerting Co., et al., v. State, Ill.Ct.Cl. 591, 621-2*, and cases cited therein. The only exception whereby a contract exceeding an appropriation may be valid is where it is expressly authorized by law, as where authorities in charge of a penitentiary are required by law to feed, clothe and guard prisoners. *Fergus v. Brady, 115 N.E. 393, 396*. This is clearly not the situation before the Court.

Claimant has referred the Court to numerous cases wherein we have made awards where appropriations have lapsed, but in no case cited did the claim exceed the unexpended portion of the appropriation.

Were the Court to enter an award in the full amount of Claimant's claim, it would be usurping the exclusive power of the Legislature to determine the limits on the amounts of public funds which can be expended.

The Court is without power to make an award in excess of **\$4,850.00**, the unexpended, lapsed portion of the appropriation. As we have heretofore stated, only an act of the legislature could grant Claimant's claim in its entirety.

Claimant is hereby awarded the sum of Four Thousand Eight Hundred Fifty Dollars (**\$4,850.00**).

(No. 73-142—Claimant awarded \$5,281.00.)

BERNARD J. WESSEL, Claimant, *us.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed December 4, 1975.

PAUL M. STORMENT, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

NEGLIGENCE—*duty of care*. Before Claimant can recover, he must establish that the State was negligent in the operation of the highway, that Claimant was free from contributory negligence, and that the negligence of the State was the proximate cause of the accident.

SAME—*evidence*. Where evidence indicates that for a considerable period of time the area in question was subjected to an ice accumulation caused by the highway being constructed lower than the surrounding land and that Claimant was not guilty of contributory negligence, claim will be allowed.

HOLDERMAN, J.

Claimant seeks recovery for personal injuries he allegedly suffered as a result of an accident on January 2, 1973, while he was operating a motor vehicle in a southwesterly direction between Belleville and Millstadt on Illinois Highway 158.

It is Claimant's contention that he struck a patch of ice which caused his car to go out of control and roll down an embankment into a small valley, causing him to sustain serious and permanent injuries.

Claimant alleges that the State, which had control over State Highway 158, allowed ice to accumulate on said highway, causing the condition that resulted in the accident.

Claimant further alleges that the State failed to maintain, clear off, salt, throw cinders, and to remove said ice from the highway and that, as a result thereof, the accident occurred.

Claimant further alleges that this condition had existed for a long time due to the fact that the highway was lower than the surrounding embankment and that water and ice constantly accumulated on said pavement.

Before the Claimant can recover, he must establish: (1) that the State was negligent in the operation of the highway; (2) that Claimant was free from contributory

negligence and did not contribute to the accident; and (3) that the negligence of the State was the proximate cause of the accident.

The record is clear that for a considerable period of time at the area in question there was an ice accumulation caused by the highway being constructed lower than the surrounding land and that rain or melting snow flowed off and down an embankment and onto the highway, causing ice to form as evening approached.

An engineer for the State testified that a few hours before the accident, he drove by the scene of the accident, noticed the highway was wet with water running across the highway, but there was not ice formed at that time since it was still afternoon and the weather not yet at the freezing stage. The same engineer testified that he had observed the same icy condition over the past few years and, since it was under his jurisdiction, he usually ordered salt put on the area, but not warning signs or devices, which in this instance were installed after the accident.

It is interesting to note that after the accident, the highway department also excavated the side of the hill next to the scene of the accident by digging a drainage ditch to keep any further water from going onto the highway and freezing.

It is abundantly clear from the testimony of the employees of the Respondent that a dangerous condition did exist at the scene of the accident, and that Respondent should have known that it constituted a hazard for the travelling public.

The position of the Claimant is further strengthened by the testimony of State Trooper Richard W. Kohler who stated that on the day prior to the accident he had noticed water and ice accumulation on

the highway at the bottom of the embankment where the accident occurred and reported this to the Highway Department as a hazardous condition. He further testified he saw a patch of ice on the pavement in the same place on the night of the accident and stated that the accumulation was caused by water running down an adjacent hillside. He also testified that he noticed a patch of ice prior to the accident on the evening Claimant was injured, and that on the previous evening when he noticed the situation, he put out flares, but on the night of the accident, he did not do this.

The Respondent raises the question as to whether or not there was contributory negligence, and uses as the basis for its argument that the car of Claimant went a very considerable distance over the embankment before it struck anything. It is the State's contention that Claimant was driving at such a high rate of speed that when he struck the ice and lost control of his car, the excessive speed, and not the ice, was the cause of the accident in question.

There is not any other evidence tending to support the position of Respondent that the Claimant was guilty of contributory negligence.

The evidence indicates that after the Claimant struck the ice, he travelled for a distance of 80 to 90 feet and then went over the embankment. Claimant's testimony was that he was travelling between **45** and **50** miles per hour and that he had seen no ice on the highway between Belleville and the place where the accident occurred and, that being the case, he did not expect any ice.

This Court, in the case of *Clifton W. Burgener, Adm. of the Estate of Myra J. Burgener v. State of Illinois*, 25 Ill.Ct.Cl. 6, passed upon a situation nearly identical with the present case. In that case, the evi-

dence indicated that the State had knowledge of an area that tended to accumulate ice and that, in fact, the Respondent had known of several accidents the previous night. The evidence in that case further showed there were not any signs erected to warn the travelling public. In the opinion in that case, in discussing the liability of the State, the following was cited:

While the State is not liable for injuries from the natural accumulation of ice and snow *Levy vs. State of Illinois*, 22 Ill.Ct.Cl. 694, it may be held liable for failure to warn the travelling public of the dangerous condition of a highway caused by an unusual accumulation of ice, where it has had notice of such condition. (*Bouey, et al. vs. State of Illinois*, 22 Ill.Ct.Cl. 95.)

This Court has repeatedly held that it is the duty of the State to warn motorists using public highways, to exercise ordinary care to keep them reasonably safe for such use, and to warn of unsafe conditions. *Rickelman vs. State of Illinois*, 19 Ill.Ct.Cl. 54.

This Court has also held the following:

The State is not an insurer against all accidents upon its highways but is required only to keep them in a reasonably safe condition for the purpose to which the portion in question is devoted, and the placing of adequate signs warning of the conditions to be met fulfills the obligations of the State to the users of the highways. *Donald Emm and John Vanda vs. State of Illinois*, 25 Ill.Ct.Cl. 213.

In the present case, it is clear that the State did have knowledge of this situation and that such knowledge had existed for a considerable period of time. Despite the fact, warning signs had not been placed to warn the travelling public, and even though salt and cinders had been spread which did not remedy the situation, the State was responsible.

It is the opinion of this Court that the Claimant was in the exercise of ordinary care and was not guilty of contributory negligence.

It appears from the record that the Claimant was obligated to spend \$375.00 for the hospital bill, \$96.00 for the doctor's bill, and \$10.00 for the ambulance bill.

Claimant also makes a claim for lost wages in the amount of \$1,600.00 although there is evidence to the effect that he was discharged by his physician several weeks prior to the time he went back to work.

We believe an award of \$800.00 for lost wages, \$2500.00 for pain and suffering, and \$1500.00 for permanent scars is a just and fair award, along with the amounts set forth above for the hospital bill, doctor's bill and ambulance bill.

Claimant is hereby awarded the sum of Five Thousand Two Hundred Eighty-One Dollars (\$5,281.00).

(No. 74-194—Claim denied.)

LAWRENCE STONE, **Claimant**, *vs.* STATE OF ILLINOIS, ILLINOIS
JUNIOR COLLEGE BOARD, **Respondent**.

Opinion filed September 22, 1975.

STATE EMPLOYEES BACK SALARY
Renewal of contract of employment

BURKS, J.

“his matter is now before the Court for a ruling on Respondent’s motion for a summary judgment. As prologue to our ruling, we briefly summarize the facts as follows:

This claim is based on an alleged breach of a contract of employment.

The alleged contract consisted of a letter dated October 29, 1971, from Respondent’s Executive Secretary notifying the Claimant that “the Illinois Junior College Board at its meeting on October 15 authorized your appointment to a position on the staff of the Illinois Junior College Board at an annual salary rate of \$20,000.” The said letter of appointment consisted of two paragraphs; it stated that he could use the title of

“Construction Engineer.” It made no reference to any specific term or period of Claimant’s employment.

Respondent’s letter dated September **19, 1972**, confirming earlier discussions with the Claimant in July and August, notified the Claimant that his position and employment would be terminated as of October **1**; that arrangements had been made to keep him on the payroll of a different agency, the Capital Development Board, through the month of October; that Claimant should take the leave time he had coming during the remainder of September; and that the I.J.C. Board would not have any funds left in its budget after October **1** to pay Claimant any salary or leave time.

On November **1, 1973**, **13** months after Claimant’s termination, Claimant filed his complaint in the Court. It states that after the date his employment was terminated, Respondent failed to pay Claimant any salary and alleges that this was contrary to his “annual salary agreement.” The complaint seeks **\$21,945** for salary allegedly due and **\$1,771** for **23** days of accumulated leave allegedly due him.

Respondent’s answer admitted hiring the Claimant for a period from October **21, 1971**, through September **30, 1972**, but denied that the Claimant is liable for more than a one year contractual relationship. As an affirmative defense, Respondent contends there is no expectancy of reemployment after the expiration of a one year contract.

On May **13, 1975**, Respondent filed a motion for summary judgment with supporting affidavits pursuant to §56 of the Civil Practice Act, and its Memorandum of Law in support of said motion was filed June **3**.

On May **19, 1975**, Claimant filed objections to Respondent’s motion, stating that “there are substantial

questions of fact to be resolved through trial” without any suggestion as to what the issues of fact might be. Claimant’s previous reply to Respondent’s affirmative defense, denying that his employment was only for a period of one year, raises a question for legal interpretation and not a question of fact. Claimant indicated his intention to file a Memorandum of Law within **21** days after receipt of Respondent’s memorandum, but no such document nor counter-affidavits have been filed by Claimant.

We find from the pleadings, affidavits, and admissions on file that the only issues in this cause are questions of law. Moreover, since Claimant has filed no counter-affidavits, we must be guided by the following rule stated in *Leon v. Miller*, 23 Ill.App.3d 694, 699:

Where properly alleged facts in affidavits in support of motion for summary judgment are not contradicted by counter-affidavits, facts so averred must be taken as true, notwithstanding existence of contrary averments in pleadings of adverse party which purport to raise issues of fact.

Claimant’s assumption that his employment was **for** a term of more than one year, in the absence **of** any statement in the contract to that effect, is without merit. The words in his letter **of** appointment, “at an annual salary rate of \$20,000,” means the rate **of** payment and not a contract for a fixed term. It was certainly not a tenure for life or during good behavior.

Claimant understood that he was just employed for a term of one year according to the following admission of his attorney in a letter to the Respondent dated November 1, 1972:

Mr. Stone was employed by the Board for one year from approximately the middle of September, 1971 to September 30, 1972.

Such admission of fact by Claimant’s attorney is admissible against his client, *I.L.P. Evidence Attorneys*, §175.

The U.S. Supreme Court struck down the right of expectancy of renewal of a contract of employment, stating that the Claimant "was not constitutionally entitled to a statement of reason or to a hearing on the decision not to rehire him." *Roth v. Board of Regents of State Colleges*, 408 U.S. 564, 33 L.Ed.2d 548.

Claimant does not deny that he was properly paid for a full year's service, nor that he was not properly advised by the Respondent to take his accumulated leave time off before his employment pay period terminated.

Respondent's motion for a summary judgment is hereby granted, and this claim is denied and dismissed.

(No. 74-216—Claimant awarded \$32,500.00.)

ILLINOIS BELLI & BELLI COMPANY; Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed October 9, 1975.

CONTRACTS—validity. Where evidence indicates that the contract between the Claimant and the State was one for professional services, and therefore, not required to be put out for bids, such contract is legal and enforceable.

HOLDERMAN, J.

Claimant, Illinois Belli & Belli Company, is a corporation engaged in architectural design and engineering. On January 6, 1971, after successful bidding, it entered into a contract with the Department of General Services for professional architectural and 'engineering services for the Mental Retardation Facility in Waukegan, Illinois.

On April 15, 1971, Claimant entered into a supplementary agreement, this time with the Department of Mental Health, under which agreement Claim-

ant agreed to prepare for the Department's inspection and approval, design drawings and specifications for the Mental Retardation Facility at Waukegan which would detail each item of furniture and furnishings, assignments by item number, completely unit priced, with specifications providing for delivery, uncrating and set-up in place within the Facility and including supervision of the services. This agreement provided further that the Claimant would solicit and take bids on all items of furniture, which bids could be accepted or rejected by the Department. The Claimant was to be paid not to exceed \$50,000 or 5% of the actual cost of the furnishings whichever was less. Claimant was to be paid as the work progressed. On June 4, 1971, Claimant forwarded a voucher to the Department based on completion of 25% of the work. The voucher was in the sum of \$12,500 and was paid by the State. Later, on September 14, 1971, a voucher was sent for another payment. Claimant had then arrived at 50% completion stage. This voucher was never paid, nor has any other amount been paid to the Claimant under this second contract.

There is no claim being made here under the original contract, just under the subsequent contract covering the furnishings with the Department of Mental Health.

After the second contract was entered into, the Department of Mental Health advised the Claimant that solicitation of bids would be taken over by the Department of General Services, and this amendment to the contract was acceptable by the Claimant. The Department of Mental Health had requested and obtained from Attorney General an opinion which stated that the contract sued hereunder was illegal.

Since the Claimant did not have to solicit bids, it

did not have to perform fully under the contract. It alleges, however, that all other work other than processing the bidding was performed by it. It contends that 90% of the original work contracted for has been completed. It therefore makes claim here for the sum of **\$32,500**, being the balance of the contract, based on a 90% completion of the work originally contracted for.

The Respondent denies any liability on the grounds that there was no competitive bidding in the first instance and that the "purported" contract between Claimant and the Department of Mental Health was an improper delegation of authority. The State contends that the contract was illegal because it violated the State Purchasing Act which provides for competitive bidding. Claimant takes the position that this second contract was an off-shoot of the original architectural contract, that this contract was for professional services, and, as such, was an exception under the Purchasing Act. See *Ill.Rev.Stat., Ch. 127, §132.6(a)(2)*.

No evidence was taken but the parties entered into a stipulation of facts. Further, the deposition of Edo J. Belli, President of Claimant corporation, taken September 16, 1974, was attached to the stipulation and incorporated by reference as part of the stipulation.

It appears from the whole record that Claimant had met often with members of the Department of General Services, the Department of Mental Health, State Architect, and attorneys for said Departments. It further appears that the modification of the contract, eliminating the taking of bids, was undertaken with the agreement of said Departments. There was no question in the record that the services were not satisfactory. It further appears from the record that 90% of the contract was properly performed.

It is the Court's opinion that the contract between the Claimant and the Department of Mental Health was a contract for professional services and, therefore, was not required to be put out for bids under *Ill.Rev.Stat., Ch. 127, §132.6*.

Claimant is awarded Thirty-Two Thousand Five Hundred Dollars (\$32,500).

(No. 74-323—Claimant awarded \$265.23.)

UNIGARD INSURANCE GROUP, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed August 18, 1975.

VAN EMDEN, BUSCH & VAN EMDEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

NEGLIGENCE—stipulation. Claim for damages sustained by Claimant's subrogee when automobile stolen by runaway from State boys' home allowed.

PER CURIAM.

This cause coming to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by Claimant's subrogee, Silverio Curiel, when his **1971** Ford automobile was stolen by one Rafael Arroyo, a runaway student of the Hanna City State Boys' School on July **23, 1973**. Upon presentation of a claim for said damages by Claimant's subrogee, Claimant paid to Silverio Curiel the sum of **\$265.23**, as substantiated by the exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of **Two** Hundred Sixty-Five and 23/100 Dollars (\$265.23) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 74-548—Claimant awarded \$150,000.00.)

ROSSI CONTRACTORS, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed July 11, 1975.

DENT, HAMPTON & McNEELA, by EDWARD McNEELA, Attorneys for Claimant.

WILLIAM J. SCOW, Attorney General; LEONARD CAHNMANN, Assistant Attorney General, for Respondent.

CONTRACTS—mistake. Where bidder's mistake was an understandable human error, and Claimant did everything reasonably possible to have the error corrected, contract will be rescinded and bid deposit returned to avoid unjust enrichment to State.

BURKS, J.

This claim is brought pursuant to §8(b) of the Court of Claims Act for rescission of a contract bid and for a refund of a bid deposit which accompanied Claimant's bid for a contract to do certain construction work for the Respondent. The amount claimed is \$150,000.00

From a stipulation of facts, the testimony, and other evidence in the record, we restate the undisputed facts as follows:

On August 10, 1973, the Claimant submitted its bid to the Respondent for "Phase 1 Construction of the Busse Woods Reservoir" (Contract #FR-234) in the amount of \$2,979,145. With its bid, Claimant submitted a certified check in the amount of \$200,000 as a proposal

guarantee, as prescribed by the Respondent for bid proposals falling within a range of three to five million dollars. Claimant had intended its bid to be in the sum of \$3,455,145. The lower amount actually bid in error (\$2,979,145) would have required a lower bid deposit of \$150,000.

The Claimant's schedule of unit prices in the proposal had been completed at its home office in Chicago on August 9th, except for Item 4, "Earth Excavation," which was completed on August 10th in Springfield after a phone conversation between one of Claimant's partners, Angelo Rossi, and the Claimant's main office. This was evidenced by examining the original proposal and noticing that Item 4 is written in a different color of ink than the remainder of the proposal. The Claimant's main office had relayed a unit cost of \$1.28 per cubic yard, but the message was misunderstood and a unit price of \$1.08 per cubic yard was erroneously entered in the Claimant's proposal a short time before the deadline for submitting bids. By reason of said mistake, the Claimant's proposal was \$476,000 lower than intended. (Respondent's engineer had actually estimated the cost of earth removal at \$1.75 per cubic yard.)

Immediately upon discovery of the mistake, on the evening of the same day, and prior to acceptance of the Claimant's bid by the Respondent, the Claimant sent a telegram to the Respondent informing the Respondent of the facts set forth above and requesting that the Claimant's bid be revised accordingly or that its bid be withdrawn. Some 28 days later, on September 7, 1973, the Respondent advised the Claimant by letter that the construction contract had been awarded to the Claimant for the sum of \$2,979,145.00

Claimant's bid was approximately \$175,000 lower than Respondent's stated appropriation for this work,

was \$820,865 below the estimate of Respondent engineer for the same work, and was approximately \$800,000 below the next lowest bidder.

We find that Claimant's bid was *so* disproportionate to Respondent's own estimate and the other bids, that Respondent should have known that Claimant's bid was the result of a mistake, as Claimant had stated in its immediate and timely notice to the Respondent.

A further fact that gave notice of the error to the Respondent was the \$200,000 Claimant tendered as a bid deposit guarantee of three million dollars, rather than tendering a check for \$150,000, the amount requested by the Respondent for bids in the two to three million dollar range. Respondent has returned \$50,000 to the Claimant, the excess in Claimant's proposal deposit guarantee tendered, and the Respondent has re-let the construction contract to another contractor.

Finally, we take notice that the Department of Transportation has withdrawn its opposition to this claim in a letter dated April 3, 1975, from Langhorne Bond, Secretary of the Department, to Attorney General Scott which reads as follows:

After having reviewed the claim of Rossi Contractors, presently pending in the Illinois Court of Claims, for return of a \$150,000 proposal guaranty, I have come to the conclusion that the contentions of the principals of Rossi Contractors, its Chief Engineer and documentary evidence produced in recent discovery proceedings corroborating those contentions no longer warrants continuation of the Department of Transportation's opposition to this claim.

The contractor in this case has established that its \$2.9 million bid, opened on August 10, 1973, was inadvertently computed without inclusion of profit and overhead, resulting in a substantial underbid.

I am, therefore, directing you to stipulate on behalf of the Department of Transportation to the fact that a mistake exists in the computation of the August 10, 1973, bid in order to avoid the additional delay and expense on both sides of a full evidentiary hearing, which is unwarranted by the facts underlying this claim.

This Court ruled *in* favor of the Claimant in a similar case, *Consolidated Engineering Division, et al. v.*

State, No. 5487 filed April 27, 1971 in which we also cautioned:

The Court is mindful of the fact that public officials should exercise extreme care and caution to avoid abuses of the competitive bidding processes which have come to light in the past. An example would be a case in which a low bidder, after being awarded a contract, discovers that he has made a mistake in his bid and is allowed to raise his price so long as it does not exceed the amount of the next lowest bid. Such a practice would be manifestly unfair to all other bonafide bidders and would open the door to collusion, favoritism and fraud.

Such is not the situation in the case before us. Nor do we find sufficient evidence in the record to support a conclusion that Claimant's mistake was the result of negligence. The exercise of due care by a bidder is a condition required for rescission as was held in *Steinmeyer v. Schroepfel*, 226 Ill. 9, 80 N.E. 564. The case at bar can be contrasted with *Steinmeyer* as the Supreme Court did in *Bromagin v. City of Bloomington*, 234 Ill. 114, 120:

The appellants place great reliance upon *Steinmeyer v. Schroepfel*, 226 Ill. 9. This case is distinguished from that in two respects: First, here there seems to have been some reasonable excuse for the error made in calculating the bid; there was no such excuse in the *Steinmeyer* case. Second, here the party to whom the bid was made knew of the mistake at the time the bid was accepted.

These two older opinions were discussed in a very recent opinion which we find almost identical to the case at bar, *Santucci Construction Co. v. County of Cook*, 21 Ill.App.3d 527.

In rescinding the bid and awarding a refund of the bid deposit in *Santucci*, the Court restated the four requirements which must be met for a rescission of a contract bid for mistake which were announced and discussed in *People ex rel. Department of Public Works and Buildings v. South East National Bank of Chicago, et al.*, 131 Ill.App.2d 238, 240:

[1] That the mistake must relate to a material feature of the contract;

- [2] That it is of such grave consequence that enforcement of the contract would be unconscionable;
- [3] That it occurred notwithstanding the exercise of reasonable care; and
- [4] That the other party can be placed in status quo.

We find that all four of the above conditions are met by the Claimant in the case at bar. The bidder's mistake was an understandable human error, and Claimant did everything reasonably possible to correct the error or have its bid withdrawn immediately. Respondent had reason to know that the bid was a grave error even without Claimant's immediate notice and was not seriously prejudiced by Claimant's withdrawal of its bid. To enforce the bid proposal guarantee against the Claimant would be unconscionable under these circumstances and would result in the Respondent being unjustly enriched in the amount of \$150,000.

It is hereby ordered that Claimant's bid on the aforesaid contract be and the same is hereby rescinded, and that its bid deposit be returned.

Claimant is hereby awarded the sum of One Hundred Fifty Thousand Dollars (\$150,000.00) as a refund of its bid deposit now retained by the Respondent.

(No. 74-653—Claim denied.)

DR. J. PETER MAHER, **Claimant**, *vs.* STATE OF ILLINOIS, BOARD
OF GOVERNORS OF STATE UNIVERSITIES AND COLLEGES,
Respondent.

Opinion filed May 10, 1976.

GOLDMAN and HESSER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; DUNN, BRADY, GOEBEL, ULBRICH, MOREL & JACOB, by FRANK BRADY and MARIAN S. K. MING, of Counsel for Respondent.

CONTRACTS—burden of proof. Where a teacher cannot establish that a contract was acceded to by the governing board or its designee having authority to appoint or employ teachers, then no contract is created.

HOLDERMAN, J.

Claimant was a professor employed at Northeastern Illinois University in the Department of Linguistics. He had been employed at the University since September, 1964.

The Claimant in his complaint alleges that he and the University, through its officers and agents, entered into an employment contract which provided that the Claimant would engage in a full-time summer work program at the University, and he was to be paid the sum of **\$3,540.00**.

Claimant further alleges that part of this contract was written and part was oral.

He alleges that he did not seek other employment for the summer in question and did not accept any other offers of employment for this particular time.

The complaint further states that Claimant was notified on April 20, 1973, that he would not receive the agreed upon compensation but would only receive compensation in the amount of **\$1,770.00**, which was 50% of the original compensation, and this was the amount paid to Claimant for the summer period.

Claimant contends that by reason of the breach of said contract, he is entitled to damages in the amount of **\$1,770.00**.

Claimant further contends that a memorandum from his Department Chairman, Dr. Joseph Beaver,

dated January **23, 1973**, constituted a contract of employment, or in the alternative there was an “oral understanding” of employment status and salary which created a binding and enforceable contract.

The evidence shows that on April **20, 1973**, Claimant was notified that he would not receive the agreed upon compensation. Claimant states that he was informed he would not be paid the additional amount because the legislature did not appropriate the amount of money originally contemplated by the University, and that any demand for further services would not be paid because the payments had lapsed.

It is Respondent’s contention that if a contract was created either by a memorandum dated January **23, 1973**, from Dr. Beaver to Dr. Maher, or if there was oral communication between the two, Claimant has the burden of proof.

Claimant was offered a contract to teach for the **1972-1973** academic year, as shown by Respondent’s Exhibit **A**, which provided for the teaching on a ten-month schedule. It further provided that Dr. Maher was to be compensated at **\$1,770.00** per month for the period of the contract. The contract did not specify which months of the academic year Dr. Maher was to teach. The contract did, however, expressly state that the ten-month employment need not be consecutive.

At the time the contract was entered into, the University was on a three term system, which was set up in such a way that the Dean of the College planned the May-June months separate and distinct from the other terms. In doing this, the scheduler had to rely on appropriations from the legislature. Respondent states that this fact was common knowledge to all faculty members at Northeastern, including Dr. Maher.

In November of the academic year in question, the question arose in the Department of Linguistics as to which members would be interested in teaching for a full twelve months rather than ten months should there be enough funds appropriated to pay for this. This is verified by Claimant's own testimony.

At about the same time, the administration and Dr. Maher's Department Chairman, Dr. Joseph Beaver, made it very clear that not enough money would be available to fund full twelve months' employment for the full faculty and, therefore, professors were advised to take leave, vacations, etc.

Despite being advised of the contingent nature of employment for a full twelve months' period, it is Respondent's contention that Dr. Maher requested he be considered for full employment.

Subsequently, in January of **1973**, Dr. Beaver issued a memorandum to Dr. Maher and other faculty members indicating what classes he had each "down for" and advising that the spring schedule would "appear shortly."

In late March, Dean Hudson advised all department chairmen in the College of Arts and Science, in writing, of the vulnerable areas, and it was brought to the attention of the department chairmen that a discrepancy existed in the amount needed for funding a full teaching schedule and the amount actually available.

Dr. Beaver then contacted Dr. Maher and informed him that there was a development whereby one of the courses to be taught by Dr. Maher would probably be eliminated because of low enrollment, and Dr. Maher was asked to assume one of the courses Dr. Beaver was originally scheduled to teach.

On April 20, **1973**, Dean Hudson notified individual

faculty members of the specific classes affected by way of a memorandum, and shortly after this memorandum was issued, Dean Hudson directed Dr. Beaver to cancel "Introductory General Linguistics," the class Dr. Beaver had proposed to transfer to Dr. Maher. Dr. Beaver, however, failed to do so, and Dr. Maher taught the class on May 2nd and May 4th, after which time the class was cancelled.

On June 15, 1973, a written offer of employment consistent with the terms stated by Dean Hudson in April 20, 1973, memorandum was issued to Dr. Maher, who later signed and accepted the document under protest, as shown by Claimant's Exhibit B.

The question is—was there or was there not a contract made either by the memorandum dated January 23, 1973, from Dr. Beaver to Dr. Maher, or by any oral communication between the two.

It is elementary in a contract that there must be a complete meeting of the minds between the contracting parties. Where the assent is not final or complete and the parties are merely negotiating as to terms of an agreement to be entered into later, there is no meeting of the minds, and thus, no contract. *Milani v. Proesel*, 15 Ill.2d 423.

The memorandum in question states:

I do not find evidence that I sent each of you the Spring schedule I have you down for. It will probably appear shortly. Meanwhile, here it is. (Emphasis added.)

This would strongly intimate that Dr. Beaver was operating only on what he had recommended or what he had an individual "down for" rather than on any final schedule agreed to by the administration when he issued this memorandum. Dr. Maher, under cross-examination, admitted that he was aware that scheduling was "subject to the availability of funds."

It appears from the record that Dr. Maher could not have reasonably believed that the January 23rd memorandum constituted a contractual obligation binding both on the instructor and the University. There is not any reference to compensation or other terms and conditions of employment normally included in any contract of employment, nor does it indicate there was a final offer of employment.

As for an "oral understanding," the record does not show there was any existence of any understanding or agreement as far as a definite contract is concerned.

In addition, both parties recognize the fact that Dr. Beaver had no authority to hire or set salaries, and this fact was admitted by the Claimant who testified that it was the Dean of Faculty who determined such matters.

The conversation relied upon by the Claimant was between Dr. Beaver and Dean Hudson relative to the May-June schedule and a transfer in the teaching schedule from Dr. Beaver to Dr. Maher. These conversations were not directly between Dr. Maher and any member of the University administration having authority to make appointments or set salaries but were merely discussion as to what courses might be offered.

Where a teacher cannot establish that a contract was acceded to by the governing board or its designee having authority to appoint or employ teachers, then no contract is created. *Muehle v. School District No. 38, County of Lake and State of Illinois, et al.*, 344 Ill.App. 385.

It is the opinion of this Court that Claimant has failed to sustain his burden of proof with respect to establishing the existence of a contract of employment by and between the Board of Governors of State Colleges and Universities and Dr. Maher.

Claimant's prayer for relief is hereby denied, and the complaint herein is dismissed with prejudice.

(No. 75-72, 83—Claimant awarded \$107,869.00.)

TALSMA BUILDERS, INC., Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed March 29, 1976.

THOMAS, WALLACE, FEEHAN and BAZON, Ltd., Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, of Counsel, for Respondent.

CONTRACTS—damages. Contractor is entitled to damages caused by mistake in bid plan prepared by State architects.

PER CURIAM.

These claims were instituted by Claimant for damages for Respondent's breach of a contract for the construction of Joliet Junior College, Joliet, Illinois. Case No. 75-CC-72 is predicated upon alleged misrepresentation by Respondent of the character of the subsoil at the building site, and Case No. 75-CC-83 is predicated upon damages allegedly suffered by Claimant as a result of delays on the part of Respondent in issuing corrected designs and specifications following the discovery of the true nature of the subsoil. After a pretrial hearing conducted by the commissioner to whom the cases were assigned, Respondent conceded the merits of Case No. 75-CC-72 and entered into a written stipulation of facts relative thereto. The parties waived the filing of briefs and the undisputed facts are as follows:

On May 8, 1972, Talsma Builders, Inc., of Alsip, Illinois, entered into a contract with the Illinois Building Authority for the general construction work on the

construction of the Joliet Junior College, Joliet, Illinois, phase IB. By letter from the Illinois Building Authority, dated June **23, 1972**, Claimant was notified to commence work on June **28, 1972**. Bids for the contract were opened on March 30, **1972**, preceding, and by June **28, 1972**, Claimant had already complained to the Illinois Building Authority and to Caudill, Rowlett and Scott (project architects) because of the lengthy delay between the opening of the bids, the awarding of the contract, and the notice to commence work. The gist of Claimant's complaint was that its bid, being **\$250,000.00** lower than the second lowest bid, was a very tight figure and was conditioned upon there being no delays in getting started on the job and getting it done.

Immediately upon being notified to commence work, Claimant cleared the site and started to excavate. Sub-surface rock was encountered July **10, 1972**. This rock was not revealed by the topographical material furnished by the architect for use by Claimant in preparing its bid, nor had the architect considered this rock in preparing his plans and drawings. Immediately thereafter representatives of the architect came to the site from Texas to consider the problem. Because of the rock it was necessary for the architect to redesign grading plans, retaining walls, footings, sidewalks, a parking lot, a courtyard area, and to eliminate all storm sewers. Although the rock was encountered early in July, **1972**, the architect did not complete redesign of the project until the middle of August, **1972**, and Claimant was not instructed to proceed with the extra excavation and the revised construction until approximately August **24, 1972**, thus being subjected to obvious delays through no fault of its own.

In the meantime, by PA **77-1995**, effective July **10, 1972**, the Illinois Legislature had created the Capital

Development Board. Pursuant to the provisions of this statute, on September **22, 1972**, the Illinois Building Authority assigned Claimant's contract to the Capital Development Board, and the latter body took over the contract and the project.

Upon taking over the project, the Capital Development Board conducted its own investigation of the problems that had resulted from the sub-surface rock, and paragraph **4** of the joint stipulation entered into between Claimant, the Capital Development Board, and the Attorney General of Illinois, is as follows:

4. That as a result of further investigation by the Capital Development Board it was determined that the extra rock removal work was necessitated by the negligence of the architectural firm of Caudill, Rowlett and Scott in its erroneous testing of sub-surface conditions and preparation of the drawings and specifications for phase 1B of the Joliet Junior College project.

This Court on various occasions in the past has awarded damages to Claimants injured by breach of construction contracts, where Respondent's breach has consisted of unreasonable delays, changes of design, and misrepresentation of topographical conditions, resulting in increased costs to the contractor.

In *J. L. Simmons Company, Inc. v. State of Illinois*, **21 Ill.Ct.Cl. 503**, the Court awarded damages to the contractor-Claimant where the architectural drawings and test borings did not show the true character of the subsoil. In *Simmons*, this Court discusses an older Court of Claims case, *Arcole Construction Company v. State*, **11 Ill.Ct.Cl. 423** as follows:

Claimant, Arcole Construction Company, was awarded a contract to repave Roosevelt Avenue in the City of Chicago. Plans and specifications were prepared by the State, and through oversight no reference was made to that portion of the road bed containing abandoned street rail ties, which were imbedded in concrete, and not visible through ordinary examination. The contractor was unable to remove this portion of the highway with power shovels, but had to resort to air hammers to chip it out. The extra expense amounted to **\$24,944.85**, and a claim was made for this amount. The Court ruled that where plans and specifications are prepared by the owner, and there is a *material misrepresentation* therein, and as a result of such misrep-

resentation, the contractor is misled to his damage, he is entitled to recover the damages so sustained. An award of \$23,092.09 was granted.

After considering the stipulation of the parties and the other evidence before the Court, it is the finding of the Court in the instant case that the plans and specifications and topographical information prepared by Respondent's architects contained a material misrepresentation as to the nature of the subsoil at the project site, and that as a result of such misrepresentation the Claimant was misled to his damage.

The measure of Claimant's damages and the amount is not in question. As set forth in the Departmental Report heretofore filed herein by Respondent:

Capital Development Board staff have worked with the Architect and Contractor to review the proposals for additional work. Unit prices have never been in question as they were included in the original bidding proposal. Quantities were verified by the Construction Testing Firm, Raamot and O'Brien. Capital Development Board staff concur with the excess amount of rock removed by blasting, ramhoe, hand, and jackhammer procedures It is therefore, recommended by the Capital Development Board staff that this claim in the amount of \$107,869.00 be approved.

Claimant's cost increases are itemized in Exhibit D attached to the complaint filed in case No. 75-CC-72. They total \$121,732.00, less credits to the State in the amount of \$13,863.00, resulting in a net claim of \$107,869.00. It is hereby ordered that the sum of One Hundred Seven Thousand Eight Hundred and Sixty-Nine Dollars (\$107,869.00) be awarded to Claimant under case number 75-CC-72 in full satisfaction of any and all claims presented to the State of Illinois under case numbers 75-CC-72 and 75-CC-83 and that case number 75-CC-83 is hereby dismissed with prejudice.

(No. 75-224—Claimant awarded \$52.54.)

**PETE VAN THURNOUT, Claimant, *us.* STATE OF ILLINOIS,
Respondent.**

Opinion filed August 15, 1975.

PETE VAN THURNOUT, Pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—stipulation. Claim for negligence in allowing appointee of State youth center to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

This cause coming to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to his motor vehicle, when said vehicle was stolen by an escapee from the Illinois Youth Center, St. Charles, Illinois. The vehicle in question was stolen by student Cedric Webb on June 2, 1974, and later recovered by police in Hometown, Illinois. Damages to Claimant's vehicle have been estimated at **\$52.54**, as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Fifty-Two and 54/100 Dollars (**\$52.54**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 75-319—Claimant awarded \$135,507.00.)

HILFINGER, ASBURY, CUFAUDE & ABELS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 14, 1976.

HILFINGER, ASBURY, CUFAUDE & ABELS, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*stipulation*. Where architectural services were performed by Claimant in connection with the construction of a certain project at Eastern Illinois University, which project was never completed and where the original funds for the project were then returned to the General Revenue Fund claim will be allowed. Stipulation as to facts and amount of damage sustained.

PER CURIAM.

This cause is before this Court on the Joint Stipulation of the parties. The stipulation is set forth below and we adopt the factual matter set forth therein.

S T I P U L A T I O N

Now comes Hilfinger, Asbury, Cufaude and Abels, formerly Lundeen, Hilfinger and Asbury, a partnership, Claimant in the above entitled cause by Pratt, Larkin & Williams, its attorneys, Board of Governors of State Colleges and Universities, Respondent in the above entitled cause by Dunn, Brady, Goebel, Ulbrich, Morel and Jacob, its attorneys, and the State of Illinois by William J. Scott, Attorney General of the State of Illinois, and hereby stipulate the following:

1. That the claim of Claimant herein is a contract claim and recovery is sought under the provisions of sub-section B of Section 8 of the Court of Claims Act.

2. That Claimant's cause of action is supported by the following facts:

A. That Claimant was at all times herein mentioned, and is now, a partnership engaged in the practice of architecture with offices in Bloomington, Illinois.

B. That the Board of Governors of State Colleges and Universities, hereinafter referred to as Board of Governors, original Respondent herein, was, at all times herein mentioned, and is now a body corporate and politic responsible for the management, operation, control and maintenance of the State College and University System of the State of Illinois.

C. That Eastern Illinois University, Charleston, Illinois, was at all times herein mentioned, and is now, one of the State Colleges and Universities under the jurisdiction of said Board of Governors.

D. That the Illinois Building Authority was created by the Illinois General Assembly by an Act approved August 15, **1961**, the provisions of said Act as amended being set forth in Sections **213.1** through **214** of Chapter **127** of the Illinois Revised Statutes of **1971** State Bar Association Edition.

E. That by an Act of the Legislature, designated Public Act **72-723** approved August **8, 1969**, a certain building project, hereafter referred to herein as The Project at said Eastern Illinois University entitled "Construction of Life Science Building - Phase III" in the amount of **\$3,354,172.00** was declared to be in the public interest, a true and correct copy of said Act being attached to Claimant's complaint as Exhibit A and by reference is made a part hereof.

F. That on or about the 6th day of October, **1969**, Board of Governors employed Claimant, in writing, to perform architectural services in connection with the construction of The Project, a true and correct copy of the Agreement between Board of Governors and Claimant, being attached to Claimant's complaint as Exhibit B and is by reference made a part hereof.

G. That in accordance with the Agreement between Claimant and Board of Governors, Claimant did perform architectural services in connection with The Project, to the extent that at least **74%** of the basic services for which provision is made in Article **1** of said Agreement between Claimant and Board of Governors, being attached to Claimant's complaint as Exhibit B and by reference is made a part hereof, were completed by Claimant.

H. That in order to enable the Illinois Building Authority to provide The Project, the Agreement between Claimant and Board of Governors, was subsequently assigned to the Illinois Building Authority by Board of Governors, a true and correct copy of said assignment being attached to Claimant's complaint as Exhibit C and by reference made a part hereof.

I. That pursuant to an appropriation made by the Illinois General Assembly, Board of Governors did, on or about the 27th day of October, 1970, remit to the Illinois Building Authority, among other amounts the sum of \$160,080.00, as rental on The Project in order to provide funds for construction, including payment of fees due Claimant for architectural services, a true and correct copy of the invoice voucher evidencing said payment being attached to Claimant's complaint as Exhibit D and by reference made a part hereof.

J. That on or about May 2, 1971, the executive officer of the Board of Higher Education of the State of Illinois made certain recommendations to that Board that the construction of The Project, along with certain other projects mentioned therein be deferred. The Project is referred to in category C of said recommendation, a true and correct copy of said recommendation is attached to Claimant's complaint marked Exhibit E and by reference made a part hereof.

K. That pursuant to the recommendation of said executive officer the Board of Higher Education of the State of Illinois did, at its meeting on May 2, 1972, pass a resolution approving the recommendation of the executive officer above referred to (Exhibit E) the effect of which was to cancel or abandon construction of The Project. A true and correct copy of the pertinent part of the minutes of said meeting is attached to Claimant's complaint marked Exhibit F and by reference made a part hereof.

L. That by an Act of the Legislature, effective October **1, 1973**, there was created a Capital Development Board of the State of Illinois and the statutory provisions pertaining to same are found in Sections **771** through **792** of Chapter **127** of the Illinois Revised Statutes of **1973** State Bar Association Edition.

M. That among other things, said Capital Development Board was required by Section **781** of said Statute to establish a schedule for the transfer of projects previously authorized by the General Assembly for construction by the Illinois Building Authority but not bonded by the Illinois Building Authority at the time the Development Board Act became effective, including assignment of construction contracts and other related contracts.

The Act further provides in Section 779.07 that said Capital Development Board was authorized to accept assignments of contracts entered into by other State Agencies for construction services on projects over which the Capital Development Board shall have jurisdiction.

N. That The Project was among those referred to in said Statute which were previously authorized by the General Assembly for construction by the Illinois Building Authority but not bonded by the Illinois Building Authority as of the effective date of the Act.

O. That the schedule of projects for transfer from the Illinois Building Authority to the Capital Development Board was prepared, a true and correct copy of same is attached to Claimant's complaint marked Exhibit **G** and by reference made a part hereof.

P. That construction of The Project having been abandoned by the determination of the Illinois Board of Higher Education on or about May **2, 1972**, The Project was not included among those scheduled for transfer

from the Illinois Building Authority to the Capital Development Board, and likewise the contract with Claimant for performance of architectural services was not assigned by the Illinois Building Authority to the Capital Development Board.

Q. That the \$160,080.00 appropriation above referred to was the only sum of money ever paid over to the Illinois Building Authority in connection with The Project, and that sum together with interest earned thereon was intended to be used by the Illinois Building Authority for the payment of expenses in connection with The Project, including fees due Claimant.

R. That on or about the 8th day of September, 1972, before Claimant submitted a statement to Board of Governors, the invoice voucher of the Illinois Building Authority was mailed to the Board of Governors by the Illinois Building Authority, which said voucher was in the amount **\$167,524.73**, which included the \$160.080.00 rental payment received plus \$11,733.20 investment income less administrative expense of \$4,288.47, a true and correct copy of the Illinois Building Authority letter of transmittal dated September 8, 1972, and the invoice referred to therein being attached to Claimant's complaint, marked Exhibits H and I respectively, and made a part hereof.

S. That Warrant **No. AA3043433** dated September 12, 1972, in the amount of \$167,524.73 payable to Board of Governors representing a refund of said appropriated funds previously disbursed as prepaid rentals plus investment income, less administrative expense as referred to above was forwarded to the Auditor of Public Accounts of the State of Illinois by Board of Governors for deposit in the General Revenue Fund of the State of Illinois, a true and correct copy of the letter of transmittal being attached to Claimant's complaint, marked

Exhibit J and by reference made a part hereof. That before Claimant submitted a statement to Board of Governors, said sum of money was in fact redeposited in the General Revenue Fund of the State of Illinois.

T. That there is due and owing to Claimant herein in behalf of architectural services rendered pursuant to said contract, the sum of **\$135,507.00**, and itemized statement showing the basis of said claim being attached to Claimant's complaint, marked Exhibit K and by reference made a part hereof.

U. That Claimant did, on or about the 19th day of December, **1973**, send said itemized statement along with certificate voucher, to Eastern Illinois University, Charleston, Illinois, requesting payment of said sum of **\$135,507.00** due Claimant, a true and correct copy of said certificate voucher being attached to Claimant's complaint marked Exhibit L and by reference made a part hereof.

V. That said itemized statement and certificate voucher were subsequently presented to the Illinois Building Authority and to Board of Governors, and that Claimant has been notified in each instance by Eastern Illinois University, the Board of Governors of State Colleges and Universities, and by the Illinois Building Authority that its claim for money due in behalf of services rendered pursuant to its contract with Board of Governors cannot be paid by reason of the fact that appropriated funds disbursed as rentals and previously available for payment to Claimant had been redeposited in the General Revenue Fund of the State of Illinois and were no longer available for payment of said claim.

W. That allowance of Claimant's claim will have the same practical effect as the allowance of a claim based upon a lapsed appropriation in that the original appropriated sum reposes in the State Treasury and payments will be made from the State Treasury.

X. That Claimant has exhausted all remedies available to it, and Claimant is without remedy in the premises except by way of proceedings in this Court.

3. That Claimant's claim has been presented to Eastern Illinois University, Charleston, Illinois, the Board of Governors of State Colleges and Universities and the Illinois Building Authority commencing on or about December 19, 1973. Payment in each instance has been declined essentially on the basis that there are no funds appropriated for payment of same, funds previously appropriated for this purpose having been redeposited in the General Revenue Fund of the State of Illinois as stipulated between the parties in paragraph 2 of this Stipulation.

4. That Claimant, Hilfinger, Asbury, Cufau de and Abels, a partnership, formerly Lundeen, Hilfinger and Asbury, a partnership, is the sole owner of the claim, and no other person, firm or corporation has any interest therein, and said Claimant became interested from and after the 6th day of October, 1969, the date the employment contract was entered into between Claimant and Board of Governors as referred to in Paragraph 2 of this Stipulation.

5. That no assignment or transfer of the claim or any part thereof or interest therein has been made.

6. That Claimant is justly entitled to the amount herein claimed after allowing all just credits.

7. That neither this claim or any claim arising out of the same occurrence or transaction has been previously presented to any person or corporation or tribunal other than the State of Illinois.

8. That an itemization or bill of particulars stating in detail the amount claimed is attached to the complaint as Exhibit K and by reference is made part hereof.

9. That the claim, the subject matter of this proceeding being against the Treasurer of the State of Illinois and not against the Board of Governors, the proper party to represent the State of Illinois herein is the Office of the Attorney General.

10. That the Court award to the Claimant herein the sum of **\$135,507.00.**

Inasmuch as the facts set forth in the departmental report and the stipulation of the parties support an award of the amount claimed, this Court so finds and Claimant is hereby awarded the sum of One Hundred Thirty-Five Thousand Five Hundred Seven Dollars (**\$135,507.00**).

(No. 75-406, Consolidated — Claimants awarded as follows.)

DON E. BEANE, JR. AND MANINFIOR COURT REPORTING SERVICE, AND C. DON WESTON AND CHARLES J. KOLKER AND BARBARA CREATH AND RICHARD E. SHINN AND GARY J. MANINFIOR	No. 75-CC-406 \$5,773.68 No. 75-CC-529 4,662.82 No. 75-CC-623 1,665.00 No. 75-CC-652 424.50 No. 75-CC-653 943.79 No. 75-CC-745 91.50 No. 75-CC-756 175.90
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Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 6, 1976..

CONTRACTS—Stipulation. Where expenditures in question involved providing hearings and court records to Claimants and were absolutely required by law, exception is made to general rule that expenditures should not exceed appropriations. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

The Claimants and the office of the Attorney General have asked the Court to rule on this case on the basis of a joint stipulation of facts, the departmental reports and a memorandum of law which by agreement of the parties, has set forth the applicable law and states the issues as the parties see them. The Claimants in this suit are either licensed attorneys who have rendered services to the Fair Employment Practices Commission as hearing officers or they are court reporters who have rendered services in the taking of the transcript of the hearings conducted by the hearing officers. The Fair Employment Practices Commission was unable to pay these claims because the appropriations made by the legislature were inadequate. The original appropriation was expended with the exception of \$24.28 remaining after which a deficiency appropriation was passed and utilized leaving a balance of **\$11.53**. The department recognizes the validity of these claims other than the fact that there was insufficient appropriations.

Although the Constitution of 1870 has now been superceded, and the expenses for which these Claimants seek reimbursement were incurred following the effective date of the Constitution of 1970, the comments in the various opinions relating to Article IV, Sec. 19 of the Constitution of 1870 are still pertinent in view of the essential similarity with *Ill.Rev.Stat., Ch. 127, 166*, which is still in full force and effect. Both forbid spending or binding of the State to debts in excess of money appropriated, unless expressly authorized by law.

The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after service has been rendered or a contract made, or authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; *provided*, the General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion. (*Art.IV, Sec. 19, Constitution of Illinois 1870*)

No officer, institution, department, board, or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law. *Ill.Rev.Stat., Ch. 127, 166.*

The essential similarity of these two provisions is the use of the term "express authority of law" used in the Constitution of 1870 and the term "expressly authorized by law" as used in the statute. These terms raise the issue as to what type of an 'expenditure is expressly authorized by law.

The leading cases would appear to be *Fergus v. Brady*, 277 Ill. 272; *Board of School Inspectors of the City of Peoria, a corporation v. State of Illinois*, 12 Ill.Ct.Cl. 17; and *Schutte and Koerting Co., Corporation, etc. v. State of Illinois*, 22 Ill.Ct.Cl. 591.

For the purposes of this discussion it is not necessary to elaborate on the background of the *Fergus* decision, but it would be pertinent to quote from the decision beginning on page 279:

In Sec. 19, claims under an agreement or contract made by express authority of law are excepted, and if there is some particular and specific thing which an officer, board or agency of the State is required to do, the performance of the duty is expressly authorized by law. That authority is express which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois Penitentiary which had been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in their care, involving the expenditure of money which may vary on account of the cost of clothing, food and labor beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates.

The *Board of School Inspectors* case involved a suit by the City of Peoria for reimbursement of expenses incurred in the education of crippled children. The edu-

cation of these children was apparently induced by the passage of a statute by the Illinois Legislature which provided for reimbursement of the expenses incurred by school districts or others in the education of these children. The Legislature in passing the statute provided for \$100,000 to defray this expense. The response was so overwhelming that the expenses of the various school districts far exceeded the \$100,000. The Director of the Department of Public Welfare who was charged with the responsibility for the administration of this program prorated the claims and authorized the payment to each Claimant on a prorated basis. The claim of the City of Peoria was for the excess over and above their prorated share. The Court of Claims in that case held that the proration was an equitable approach and that the City of Peoria had no claim to any further reimbursement as the expenditure was one not expressly authorized by law in accordance with the definitions set forth in *Fergus v. Brady*. The Court distinguished *Fergus v. Brady* from *Board of School Inspectors* by pointing out that in the illustration set forth in *Fergus v. Brady*, the authorities in charge of Southern Illinois Penitentiary had a duty imposed by law to take care of all prisoners sent to their institutions whereas in *Board of School Inspectors* it was not compulsory that the counties provide the education for these crippled children. The Court points out that as a matter of fact many school districts throughout the State did not choose to participate. The claim of the *Board of School Inspectors of the City of Peoria* was therefore denied.

In *Schutte and Koerting Co., a corporation, etc. v. State of Illinois*, we have a case where the Legislature set up the Illinois Coal Products Commission, a temporary non-departmental legislative commission for purposes of constructing and maintaining an experimental pilot plant to develop techniques for the profitable utili-

zation of the low grade coal found in Illinois. The Commission was originally created in **1943**, at which time a total of **\$35,000** was appropriated. In each of the years **1945, 1947, 1949** and **1951**, the Commission was re-created by an identical act of the General Assembly, and in each act a certain specified sum was appropriated for the identical purposes expressed in the **1943** act. *Schutte v. State* was filed as a result of the fact that contracts were entered into between the Coal Products Commission and certain suppliers with said contracts being in excess of the **\$100,000** appropriated for the **1949** through **1951** biennium.

In *Schutte v. State* the Court states beginning on page **603**:

With respect to this question, it is fundamental that all governmental agencies, departments and commissions are strictly circumscribed in their powers and authorities by the constitution and statutes of the State of Illinois.

Chapter **127, 8166** of the Illinois Revised Statutes, (1955 State Bar Association Edition) provides as follows: **8166** Indebtedness exceeding appropriation prohibited. No officers, institution, department, board of commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law. **1919, June 10, Laws 1919 p. 946, 830.**

This Court then follows by quoting from *Fergus v. Brady*, pp.279 and 280 wherein they once again discuss what is meant by express authority of law and cite the example given with reference to Southern Illinois Penitentiary.

However, in *Schutte v. State* rather than to deny all claims outright, this Court took one step beyond their holding in *Board of School Inspectors of the City of Peoria v. State* and held that where sufficient funds were available at the time the contract was entered into, the Court would honor the contract even though the contract was not paid before the funds available were totally expended.

The Court went on in the *Schutte* case to hold that any contract entered into, after the appropriation had become totally obligated, would be denied.

It is important in applying the principle set out in *Schutte* to distinguish between the balance of the appropriation left unobligated and the balance of the appropriation actually remaining on hand. To allow a claim, simply because the amount actually being held on the date the obligation is incurred equals or exceeds the obligation, would lead to overspending by the agency and deficiency appropriating by the Court.

On the other hand, to carefully grant awards on the basis of the amount unobligated on the date the debt is incurred could result in a more equitable distribution of the funds appropriated and hopefully, responsible spending controls on the part of the agencies.

It is inherent in the administration of State government that expenditures should not exceed appropriations previously made with the possible exception set forth in the case of *Fergus v. Brady* where the expenditure is strictly prescribed and the spending agency is compelled by circumstances and law to obligate the State.

Without strict and well enforced guidelines, the spending of State officials could become rampant.

The drafters of the Constitution of 1970 were fully cognizant of this situation when they drafted Article VIII, Sec. 1. They provided two requisites for spending of public funds: it must be for a "public purpose" and it must be "only as authorized by law":

Section 1. General Provisions (a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

We find here a similarity of the concepts that obligations must be made only with “express authority of law” (Constitution of **1870**) or “only as authorized by law” (Constitution of **1970**).

The basic concept of the obligation having to be authorized by law remains, but the question arises as to the significance, if any, of the fact that the drafters failed to utilize the word “express” or “expressly” in conjunction with the phrase “only as authorized by law.”

Did this indicate an intent that the restrictions on obligating or spending public funds be less stringent? Was this simply an attempt to delegate a wider latitude of discretion to the General Assembly? Or was it neither, but simply an example of the elimination of superfluous verbage?

The determination of this question seems academic in view of the fact that the law on the books today remains as it was in **1967** and **1968**, *Ill. Rev. Stat. Ch. 127, §166*, and retains the “restrictive” phrase “expressly authorized by law.”

The question then is, were the expenditures in question here, namely the F.E.P.C.’s expenses involved in providing hearings and records thereof to the complainants, expenditures absolutely (expressly) required by law? Was the obligation under the Constitution of **1970** and the Fair Employment Practices Act analogous to the situation where the prison officials had no choice but to feed, clothe and house the prisoners assigned to their care?

We believe that they were. We, therefore, make the following awards:

DON E. BEANE	\$5,773.68
MANINFIOR COURT REPORTING	
SERVICE	4,662.82

C. DON WESTON	1,665.00
CHARLES J. KOLKER	424.50
BARBARA CREATH .....	.943.79
RICHARD E. SHINN .....	.91.50
GARY J. MANINFIOR	175.90

(No. 75-535—Claimant awarded \$74.21.)

JAMES BRACKEN, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 14, 1976.

STEPHEN M. COOPER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

NEGLIGENCE—stipulation. Claim for negligence in allowing appointee of State youth center to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to his motor vehicle, when said vehicle was stolen by escapees from the Illinois Youth Center, St. Charles, Illinois. The vehicle in question was stolen by students Michael Fain, Vincent Parrow, Rodney Moore, and Michael Bell on August 12, 1974. Damages to Claimant's vehicle have been estimated at **\$74.21**, as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Seventy-Four and 21/100 Dollars (**\$74.21**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-580—Claimant awarded \$51.41.)

**LOLA M. TURNER, Claimant, *us.* STATE OF ILLINOIS,
Respondent.**

Opinion filed June 8, 1976.

LOLA M. TURNER, Pro se.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—stipulation. Claim for negligence in allowing appointee of State youth home to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to her motor vehicle, when said vehicle was damaged by escapees from the Illinois Youth Center, St. Charles, Illinois, pursuant to *Ill.Rev.Stat., Ch. 23, 94041*. The vehicle in question was damaged by students George Grigsby and Marvin Therrrell on October 26, 1974. Damages to Claimant's vehicle have been estimated at **\$51.41** as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Fifty-one And 41/100 Dollars (**\$51.41**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-601—Claimant awarded \$250.00.)

JOYCE LAURSEN, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed March 10, 1976.

STEPHEN M. COOPER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Court of Claims Division, for Respondent.

NEGLIGENCE—stipulation. Claim for negligence in allowing appointee of State Youth home to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

The record in this cause indicates that Claimant's complaint sounds in tort and alleges negligent conduct of the State of Illinois Department of Corrections in allowing two students to escape from an institution under the control of such department and their subsequent theft and destruction of a vehicle owned by Claimant, which is the substance and subject matter of her complaint; and

That the parties to this action entered into a Joint Stipulation based upon information forwarded to the Office of the Attorney General by said Department of Corrections as evidenced by the Departmental Report attached to the Joint Stipulation.

Accordingly, this Court finds that there now exists no question of fact to be determined by this Court and that Claimant's claim is compensable pursuant to *Ill.Rev.Stat., Ch. 23, §40-41*, entitled "Damages Caused by Escaped Inmates of State Controlled Institutions."

It is hereby ordered that the Claimant be awarded in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause the sum of Two Hundred Fifty Dollars (\$250.00).

(No. 75-762—Claimant awarded \$2,753.00.)

WILLIAM D. REINWEIN, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed September 4, 1975.

WILLIAM D. REINWEIN, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES; STATE EMPLOYEES—Medical Fees. Where medical services were performed for inmates and employees of State institution, claim for medical fees will be sustained except as to claims barred by two year statute of limitations, or barred because recipients of the services were not patients under the jurisdiction of the Department of Mental Health.

PERLIN, C. J.

Claimant, a physician, has brought this action to recover the sum of **\$5,518.50** for medical and surgical services rendered to numerous inmates and employees of East Moline State Hospital between November, **1965**, and June, **1972**.

Respondent has filed a motion for summary judgment, to which Claimant has not responded, alleging that certain of the claims are barred by the two year statute of limitations embodied in Section 22 of the Court of Claims Act, *Ill.Rev.Stat., Ch. 37, §439.22*; that others are barred by Rule 5D(3) of the Court of Claims; and that others are unfounded because the recipients of the medical services were not patients under the jurisdiction of the Department of Mental Health.

On consideration of the complaint herein and Respondent's motion for summary judgment, the Court finds:

1. That this action was filed on January **10, 1975**, and that Claimant's claim for services rendered to the following individuals are forever barred by the statute of limitations by reason that the services were performed prior to January 10, **1973**:

Matilda Dundy	\$300.00
Clarence Anderson	675.00
Carol Olson	230.00
Harold Brown	300.00

Charles Musch	350.00
Ruth Alberta Welte	375.00
Minnie Dykstra	375.00
June Lisenbee	15.00
Eva German	300.00
James E. McIntosh	10.00
Hulde S. Terrell	10.00
Margie A. Wright	15.00
John Wise	17.50
Margaretta Light	10.00
Margaret Carr	10.00
Total	\$2,992.50

2. That the claims for services allegedly performed by Claimant for John R. Stotts in the amount of \$10, and Margaret Murphy in the amount of **\$30**, are not properly brought in this action inasmuch as the individuals are not Department of Mental Health recipients. To include these claims, as to which the Department of Mental Health cannot provide a departmental report, would **be** violative of Rule 5D(3) of the Court of Claims, which prohibits claims against more than one department being filed in the same action.

3. That the claim for services allegedly performed by Claimant for James McCarthy has been paid.

4. That the following claims for services are not challenged by the Respondent and are in fact acknowledged as due and owing by the Department of Mental Health:

James Jenkins	\$567.00
Ignatus Kowalczyk	100.00
Audrey Monroe	300.00
Rick Girton	221.00
Glen Sanders	300.00
Curtis Miller	300.00
Elsie H. Melville	375.00

Alice Frank	350.00
Pearl Hunter	240.00

for a total due and owing of \$2,753.00.

Wherefore, this Court orders that the following enumerated claims totaling \$2,992.50 are forever barred:

Matilda Dundy	\$300.00
Clarence Anderson	675.00
Carol Olson	230.00
Harold Brown	300.00
Charles Musch	350.00
Ruth Alberta Welte	375.00
Minnie Dykstra	375.00
June Lisenbee	15.00
Eva German	300.00
James E. McIntosh	10.00
Hulde S. Terrell	10.00
Margie A. Wright	15.00
John Wise	17.50
Margaretta Light	10.00
Margaret Carr	10.00

It is further ordered that the claims for the services rendered to John R. Stotts, Margaret Murphy, and James McCarthy are hereby dismissed.

It is further ordered that Claimant be, and hereby is, awarded the sum of Two Thousand Seven Hundred Fifty-Three Dollars (\$2,753.00) for medical services rendered to the following individuals:

James Jenkins	\$567.00
Ignatus Kowalczyk	100.00
Audrey Monroe	300.00
Rick Girton	221.00

Glen Sanders	300.00
Curtis Miller	300.00
Elsie H. Melville	375.00
Alice Frank	350.00
Pearl Hunter	240.00

(No. 75-774—Claimant awarded \$85.41.)

MICHAEL L. MORY and RICHARD COLLIGNON, Claimant, *us.*
STATE OF ILLINOIS, Respondent.

Opinion filed December 22, 1975.

PERLIN, C. J.

This cause coming on to be heard on the Joint Stipulation and Motion of the parties, and the Court being fully advised in the premises, hereby amend our previous order and find that Richard Collignon is entitled to an award which may be paid out of the Illinois Court of Claims Fund.

It is therefore hereby ordered that Richard Collignon, by virtue of the assignment of rights by the Claimant herein, as contained in the Joint Stipulation of the parties, be awarded the sum of Eighty-Five And 41/100 Dollars (\$85.41).

(No. 75-827—Claimant awarded \$85.00.)

LARRY R. EINSIEDEL, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed September 24, 1975.

LARRY R. EINSIEDEL, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

NEGLIGENCE—stipulation. Claim for negligence in allowing appointee of State youth home to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount damages sustained.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to his motor vehicle when said vehicle was stolen by three escapees from the Illinois Youth Center, St. Charles, Illinois. The vehicle in question **was** stolen **by** students Joseph **Donelson**, Robert Thanos and Eugene Stamps and was later recovered by the police in St. Charles, Illinois. Damages to Claimant's vehicle have been estimated at \$85.00, as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Eighty-Five Dollars (\$85.00) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-915—Claimant awarded \$300.00.)

NATIONAL BEN FRANKLIN INSURANCE COMPANY **as** SUBROGEE,
ETC., Claimant, **vs.** STATE **of** ILLINOIS, Respondent.

Opinion filed October **14**, **1975**.

NATIONAL BEN FRANKLIN INSURANCE COMPANY **as**
Subrogee of CATHERINE MILOS, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM J.
KARAGANIS, Assistant Attorney General, for Respondent.

CONTRACTS—Claim against Secretary of State for security deposit made by Claimant under Safety Responsibility Act which sum is owed because Claimant's insured has been paid a sum total in excess of security bond. Stipulation as to facts and amount **of** damages sustained.

PER CURIAM.

This cause coming to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim seeks return of a security deposit (bond money) in the amount of **\$300.00** deposited with the Secretary of State pursuant to Ill.Rev.Stat., Ch. 95/2, **07-324**. That Claimant's insured has been paid a sum total in excess of the aforementioned **\$300.00** amount, and that Claimant is thereupon entitled to recovery of the **\$300.00** security bond to be applied and deducted from the proceeds of the unsatisfied judgment of Claimant's insured against one Ali Jalayer (uninsured motorist).

It is hereby ordered that the sum of Three Hundred Dollars (**\$300.00**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois arising out of the above captioned cause.

(No. 75-958—Claim denied.)

EDWARD S. FUSEK, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent,

Opinion filed July 23, 1975.

CONTRACTS—*Claim by attorney for services rendered. Claim by attorney for services rendered Illinois Liquor Control Commission in filing appeal from a judgment rendered against the Commission by the Circuit Court will be denied where no law authorizes the Commission to retain counsel other than the Attorney General.*

HOLDERMAN, J.

Claimant seeks payment in the amount of **\$998.30** for legal services he rendered the Illinois Liquor Control Commission in filing an appeal from a judgment rendered against the Liquor Commission by the Circuit Court. The Liquor Commission had instituted proceed-

ings pro se against the City of Joliet and the Mayor of Joliet. The City of Joliet had adopted an ordinance prohibiting the sale or delivery of alcoholic beverages to persons 19 and 20 years old. The Commission contended that the City Ordinance controvened the State statute which permits the sale and gift of beer and wine by license holders to persons 19 and 20. It was argued that the City Ordinance was invalid. The trial court ruled in favor of the City of Joliet and the Liquor Commission appealed to the Appellate Court.

The Liquor Commission was not represented by the Attorney General, either at the trial in the Circuit Court or on the appeal. On appeal, the Attorney General filed a petition seeking leave to intervene and asking that the appeal be dismissed. The motion to intervene was denied, and the Appellate Court heard the appeal on its merits and ruled in favor of the City of Joliet.

Claimant here rendered various services on behalf of the Commission in perfecting the appeal.

In its motion to dismiss, the State takes the position that the Liquor Commission, as an agency of the State, shall incur obligations for payment from public funds only as authorized by law, and that the statute defining the powers of the Illinois Liquor Control Commission (*Ill.Rev.Stat., Ch. 43,097*) does not authorize an officer of the Commission to engage legal counsel other than the Attorney General. The Attorney General cites *Dunlop v. State of Illinois*, 3 Ill.Ct.Cl. 107, and quotes therefrom:

The Attorney General is the law officer of the State and the State cannot incur an expense for attorney's fees without his special order.

The case of *Fergus u. Russell*, 270 Ill. 304 was further cited.

The Attorney General intimates that Claimant may have a cause of action against those who employed him.

In answer to this, the Claimant points out that this issue was raised in the petition to intervene filed by the Attorney General in the City of Joliet case.

The Court has examined the brief in support of the petition for intervention filed by the Attorney General in the City of Joliet case, and it is true that the matters were set forth in that petition and the position taken was identical with the State's position before this Court.

We hold, however, that the Appellate Court's denial of the motion to intervene was not a finding that the Liquor Control Commission was authorized to hire private attorneys.

Had the Appellate Court intended to sanction the employment of private attorneys to handle litigation for State agencies, it surely would have so stated in its order of May 8, **1974**, and announced that it was reversing a long line of cases following *Fergus v. Russell*, 270 Ill. 304 in which the Supreme Court said at page 342:

The Attorney General is the chief law officer of the State, and the only officer empowered to represent the people in any suit or proceeding in which the State is the real party in interest, except where the constitution or a constitutional statute may provide otherwise. With this exception, only, he is the sole official adviser of the executive officers and of all boards, commissions and departments of the State government, and it is his duty to conduct the law business of the State, both in and out of the courts.

Claimant cites no law authorizing the Liquor Control Commission to engage legal counsel other than the Attorney General, nor does Claimant question the authorities cited in Respondent's motion to dismiss. Claimant's objection to said motion is based solely on the assumption that the question of proper legal representation of the Commission was decided by the Appellate Court in its brief, one sentence order of May 8, **1974**, which merely stated:

The Motion of William J. Scott, Attorney General of the State of Illinois, to intervene and dismiss the appeal and other relief sought is denied.

The authority of the Attorney General as stated in *Fergus* being well understood by the Appellate Court, we think it more logical to assume that his motion was denied only because the Court did not favor a dismissal of the appeal at that particular stage in the litigation without the appellant's consent, and without rendering a judicial ruling on certain "home-rule" issues of general public interest.

The Appellate Court did in fact dismiss the appeal in its landmark opinion of March 5, 1975, *Ill. Liquor Control Commission v. City of Joliet*, 324 N.E.2d 453. In upholding the Joliet Ordinance (which set a 21 year old minimum drinking age for beer and wine, notwithstanding the 19 year old minimum age established by the State statute) the Court reached the same conclusions of law on which the Attorney General had decided that it would be futile to challenge this City Ordinance or to appeal the judgment of the Circuit Court which had previously upheld it.

If the Appellate Court had granted the Attorney General's motion to dismiss the appeal before rendering its opinion, all governmental units would have been deprived of some very significant judicial interpretations dealing with the powers of "home-rule" municipalities in the area of liquor control.

We find that the position of the Attorney General is sustained by the authorities cited in the motion to dismiss this claim.

Respondent's motion to dismiss is granted.

(No.75-1295—Claimant awarded \$480.00.)

ROGER L. REISING, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed December 12, 1975.

ROGER L. REISING, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—*back pay*. Reimbursement arising from wrongful discharge of employee.

PER CURIAM.

This claim arose as the Claimant was improperly discharged. He was discharged January 11, 1974, and rehired on July 27, 1974. The first Civil Service Commission hearing was scheduled March 1, 1974, and was continued at the request of the Claimant's attorney. The hearing was held on May 24, 1974. The department does not have to pay Mr. Reising's back salary for the period the hearing was continued at his attorney's request. From May 1 through May 24, 1974, Mr. Reising was paid \$480.00 in unemployment compensation. However, the amount claimed (\$480.00) was originally erroneously withheld as a set-off for unemployment compensation received during the period of unemployment, while in truth the original payment for back salary did not include payment for the period of time represented by the unemployment compensation which was set off. Therefore, there are no deductions to be withheld from the amount herein awarded.

It is, therefore, ordered that Claimant be and is hereby awarded Four Hundred Eighty Dollars (\$480.00).

(No. 75-1452—Claimant awarded \$300.00.)

BRIAN GABRIELSON, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 29, 1976.

ROBERT A. M. PREDAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—stipulation. Claim for negligence in allowing appointee of State youth home to escape, which said appointee thereafter stole Claimant's motor vehicle, causing damage thereto. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to his motor vehicle and loss of certain of his personal belongings when said vehicle and personal belongings were stolen by escapees from the Illinois Youth Center, St. Charles, Illinois. The motor vehicle and personal belongings in question were stolen by Ronnie New and Ruben Little. Damages to Claimant's vehicle and the loss of personal belongings have been estimated at \$300.00, as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Three Hundred Dollars (\$300.00) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 76-479—Claimant awarded \$3,482.50.)

GEORGE J. LEWIS, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed *May* 28, 1976.

CONTRACTS—stipulation. Where expenditures in question involved providing hearings and court records to Claimants, and were absolutely required by law, exception is made to general rule that expenditures should not exceed appropriations. Stipulation as to facts and amount of damages sustained.

PER CURIAM.

This cause comes before this Court on a Joint Stipulation by the Attorney General and the Claimant based on the facts set forth in the departmental report and the holding of this Court in the consolidated cases of which the case of *Don E. Beane, Jr. v. State of Illinois, No. 75-406* is representative. In the *Beane* case, Mr. Beane was a hearing officer for the Fair Employment Practices Commission and it was ruled in that case that, although the F.E.P.C. was short of funds appropriated for the purpose of payment of hearing officers and court reporters, the function performed by the hearing officers and court reporters was a function required by the Constitution of 1970 and by the statutes setting up the Fair Employment Practices Commission pursuant to the requirements of the constitution. It was held that, therefore, the expenses incurred by F.E.P.C. for hearing officers and court reporters were expenses "expressly authorized by law." Being expressly authorized by law, this expenditure fell within the exception to expenditures in excess of moneys appropriated pursuant to *Ill.Rev.Stat., Ch. 127, §166*, wherein it is stated:

No officers, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

We find that the claim of Mr. George J. Lewis is identical with the claim of Mr. Beane and we, therefore, grant an award in the amount of Three Thousand Four Hundred Eighty-Two and 50/100 Dollars (\$3,482.50).

(No. 76-785—Claimant awarded \$25,596.63.)

HERSCHEL SUNLEY, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 12, 1976.

CONTRACTS—*stipulation.* Claim by contractor for work performed at Illinois State Fairgrounds. Where fund to pay Claimant had lapsed and due to oversight by Respondent, no other sums were appropriated, claim is properly allowed.

SAME—*same.* Court does not establish a precedent that a void contract, entered into after the lapsing of an appropriation, will be enforced.

HERSCHEL SUNLEY, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

PERLIN, C. J.

This is an action to recover the sum of \$25,596.63 for labor and materials furnished by Claimant in the construction of toilet facilities for disabled individuals attending the 1975 Illinois State Fair. The matter comes before the Court on the joint stipulation of the parties.

That stipulation establishes that Claimant entered into a contract with the Capital Development Board on July 22, 1975, under which he agreed to supply labor and materials to renovate the Illinois Building at the Illinois State Fairgrounds to make the building accessible to handicapped persons prior to the start of the State Fair on August 8, 1975. The contract price for the work was \$24,265.00, which was raised to \$25,569.63 as a result of two subsequent change orders.

The funds for the project were to come from a FY-75 appropriation account entitled, "Improvements for the Handicapped." The appropriation was contained in a bill which became law on or about May 26, 1975, appropriating to the State Fair Agency the sum of \$60,000 from the Agricultural Premium Fund for the purpose of making the State Fairgrounds accessible to handicapped persons. A portion of the FY-75 appropriation was expended on **work** at the Fairgrounds, but **the** balance of the appropriation had lapsed prior to the award of the instant contract to Claimant. At the time the contract was awarded to Claimant, the Capital Development

Board was unaware that there had not been a reappropriation of the unobligated portion of the original appropriation for improvements for the handicapped at the fair.

The stipulation before the Court further establishes that Claimant fully performed his obligations under his contract with the State, and that the State was more than satisfied with the quality of his work.

The State does not contest an award to Claimant but questions whether an award can be made where work is performed under a contract entered into after the lapse of the applicable appropriation.

In *Illinois Belli & Belli Company v. State*, 31 Ill.Ct.Cl. 129, this Court said:

The doctrine that a contract will be implied by law to pay for labor, services or materials furnished one person by another is inapplicable as against the State, but where there is no violation of positive law involved, an award against the State may be made for labor, services or materials furnished and beneficial to it.

This is not an instance where a State agency has expended funds in excess of an appropriation. Here there had been an appropriation for this specific project which, through no fault of Claimant, had lapsed before the contract was let for bidding, and which by oversight of the State had not been reappropriated for **FY-76**. It is therefore clear that it was the intent of the legislature to appropriate funds for the services performed by Claimant and under these circumstances an award for labor, services and materials furnished by Claimant to the State is proper.

Claimant is accordingly awarded the sum of Twenty-Five Thousand Five Hundred Ninety-Six And 63/100 Dollars (**\$25,596.63**).

SUPPLEMENTAL OPINION

Respondent has moved for reconsideration of the

Court's decision in this action, wherein we awarded Claimant the sum of \$25,596.63 for work performed at the Illinois State Fair to make the Illinois Building accessible to handicapped persons. Respondent expresses great concern that our opinion departs from long and firmly established precedents of this Court and may be interpreted by some as precedent for recognition of a claim against the State based either upon *quantum meruit*, implied contract or good conscience.

The Court wishes to make clear that its opinion herein stands for no such proposition, nor does this Court intend to, and in fact does not, establish a precedent whereby a void contract, entered into after the lapsing of an appropriation, would be recognized by this Court.

Rather the Court's award in this cause is based upon the specific and somewhat unique factual situation with which we are presented. It was established by stipulation that the Capital Development Board entered into a contract with Claimant on July 22, 1975, under which Claimant was to supply labor and materials to renovate the Illinois Building at the Illinois State Fairgrounds to make the building accessible to handicapped persons prior to the start of the fair on August 8, 1975.

The funds for the project were to come from an FY-75 appropriation entitled, "Improvements for the Handicapped." The appropriation was contained in a bill which became law on or about May 26, 1975, which appropriated the sum of \$60,000 from the Agricultural Premium Fund for the purpose of making the State Fairgrounds accessible to the handicapped. A portion of the **FY-75** appropriation was expended on work at the Fairgrounds, but the balance, which was in excess of the amount of this claim, lapsed prior to the award of the contract to Claimant.

As we noted in our opinion, this was thus not an instance where a State agency expended funds in excess of an appropriation. There had been an appropriation for the specific project for which Claimant seeks compensation, but that appropriation lapsed before the contract was let by bidding and, by oversight of the State, had not been reappropriated for FY-76.

Our opinion further rested upon the fact that the contract with Claimant was for improvement of facilities to make them usable by handicapped persons. The Facilities for the Handicapped Act, *Ill. Rev. Stat., Ch.* they are usable by handicapped persons.

Public buildings which lack facilities for handicapped persons (a) create a substantial risk of death or injury with respect to handicapped persons and others both in normal conditions and in the event of fire, panic or other emergency and (b) impair the full enjoyment of public buildings by handicapped persons. Therefore, facilities for the handicapped persons in public buildings are an object of serious public concern.

It is thus the announced public policy of the State of Illinois to promote the modification of public facilities so they are usable by handicapped persons.

We further note that the Purchasing Act, *Ill. Rev. Stat., Ch. 127, §166* states:

No officer, institution, department or board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

We think that the expressed public policy of the State, as set forth in the Facilities for the Handicapped Act as quoted above, brings the Claimant's contract within the foregoing exception to the Purchasing Act.

This concept is not new. It was first expressed by the Illinois Supreme Court in the case of *Fergus v. Brady*, 277 Ill. 27 where the Court stated:

And by the plain language of the constitution every claim or contract is utterly void if not within the amount of appropriations already made, unless there is express authority of law for the creation of the debt or claim or the

making of the contract. In Section 19 claims under any agreement or contract made by express authority of law are excepted, and if there is some particular and specific thing which an officer, board or agency of the State is required to do, the performance of the duty is expressly authorized by law.

Although the Constitution of 1870, to which the case of *Fergus v. Brudy* refers, has been since replaced by the Constitution of 1970, Ch. 127, 0166, as set out above, was passed by the Legislature in recognition of the constitutional exception and has not been repealed. It therefore follows that the Legislature still recognizes the desirability and validity of the exception.

In sum, our decision rests upon our perception that it was the clear and unmistakable intent of the Legislature that the public buildings at the Illinois State Fairgrounds be renovated to facilitate the handicapped in accordance with their announced public policy, and therefore, that a contract for that purpose be let, and that payment be made for the work so performed; such payment being authorized, if need be, by the exception contained in the Purchasing Act which permits expenditure of moneys in excess of an appropriation where the expenditure is "expressly authorized by law." This opinion does not rest upon considerations of implied contract, *quantum meruit* or good conscience and should not be so interpreted.

(No. 76-968—Claimant awarded \$2,664.27.)

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, Claimant,
us. STATE OF ILLINOIS, Respondent.

Opinion filed April 19, 1976.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS,
Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—stipulation. Where stipulation indicates the payment of FICA contributions was correct, claim will be allowed.

PER CURIAM.

The record in this cause indicates the purpose for which this claim was filed was for the payment of FICA contributions in accordance with schedules authorized and determined by law and that the Attorney General has submitted a Stipulation by Respondent based upon information forwarded to his office by said department, as evidenced by the departmental report attached to the Stipulation by Respondent.

Accordingly, this Court finds that this was a properly authorized expenditure by the State Board of Elections, State of Illinois. No part of this expenditure has been paid and the total outstanding is \$2,664.27. Money was appropriated under appropriation and fund #001-58701-1170-0000 of which appropriation there were insufficient funds from which to pay these contributions.

The Social Security Enabling Act, *Ill.Rev.Stat., Ch. 108-1/2, §21-101, et. seq., §21-123* specifically provides that:

Each political subdivision or instrumentality as to which a plan has been approved under "the 1951 Act" or this article shall pay into the Social Security Contribution Fund, with respect to wages at such time or times as the State Agency may by regulation prescribe, contributions in the amount and at the rates specified in the applicable agreement entered into by the State Agency.

The Constitution of 1970 provides in Art. VIII, Sec. 1 that:

Section 1. General Provisions

(a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

The General Assembly, realizing that budgetary problems **would** arise from time to time authorized the

binding of the State in excess of moneys appropriated as follows:

No officer, institution, department, board, or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

Accordingly, this Court finds that the expenditures for which claim is made was an obligation “expressly authorized by law.”

It is hereby ordered that the Claimant be awarded, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause, the sum of Two Thousand Six Hundred Sixty-Four and 27/100 Dollars (\$2,664.27).

(No. 76-969—Claimant awarded \$1,361.04.)

**STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS,
Claimant, vs. STATE OF ILLINOIS, Respondent.**

Opinion Filed April 19, 1976.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS,
Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—stipulation. Where stipulation indicates the payment of FICA contributions was correct, claim will be allowed.

PER CURIAM.

The record in this cause indicates the purpose for which this claim was filed was for the payment of FICA contributions in accordance with schedules authorized and determined by law and that the Attorney General, has submitted a Stipulation by Respondent based upon information forwarded to his office by said Department, as evidenced by the departmental report attached to the Stipulation by Respondent.

Accordingly, this Court finds that this was a properly authorized expenditure by the Illinois Arts Council. No part of this expenditure has been paid, and the total outstanding is \$1,361.04. Money was appropriated under appropriation and fund #001-5031-1170-0000 of which appropriation \$105.00 lapsed and was returned to the State Treasury.

The sole reason said claim was not paid is due to the lapse of the appropriation for the period during which the debt was incurred. The Social Security Enabling Act, *Ill.Rev.Stat., Ch. 108-1/2, § 21-101 et. seq., § 21-123* specifically provides that:

Each political subdivision or instrumentality as ~~to~~ which a plan ~~has~~ been approved under 'the 1951 Act' or this article shall pay into the Social Security Contribution Fund, with respect to wages at such time or times as the State Agency may ~~by~~ regulation prescribe, contributions in the amount and at the rates specified in the applicable agreement entered into by the State Agency.

The Constitution of 1970 provides in Art. VIII, Sec. 1 that:

Section 1. General Provisions

(a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units ~~of~~ local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

The General Assembly, realizing that budgetary problems would arise from time to time authorized the binding of the State in excess of moneys appropriated as follows:

No officer, institution, department, board, or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

Accordingly, this Court finds that the expenditure for which claim is made was an obligation "expressly authorized by law."

(No. 76-970—Claimant awarded \$144.74.)

**STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, Claimant,
us. STATE OF ILLINOIS, Respondent.**

Opinion filed May 10, 1976.

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS,
Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—stipulation. Where stipulation indicates the payment of FICA contributions was correct, claim will be allowed.

PER CURIAM.

The record in this cause indicates the purpose for which this claim was filed was for the payment of FICA contributions in accordance with schedules authorized and determined by law and that the Attorney General has submitted a Stipulation by Respondent based upon information forwarded to his office by the Legal Advisor to the Speaker of the House of Representatives of the Illinois Legislature, as evidenced by the departmental report attached to the Stipulation by Respondent.

Accordingly, this Court finds that this was a properly authorized expenditure by the House of Representatives. No part of this expenditure has been paid, and the total outstanding is \$144.74. Money was appropriated under appropriation and fund #001-10120-1900-0400 and #001-10120-1900-0300 of which appropriation there were insufficient funds from which to pay these contributions.

The Social Security Enabling Act, *Ill.Rev.Stat., Ch. 108-1/2, §21-101, 21-123*, specifically provides that:

Each political subdivision or instrumentality as to which a plan has been approved under "the 1951 Act" or this article shall pay into the Social Security Contribution Fund, with respect to wages at such time or times as the State Agency may by regulation prescribe, contributions in the amount and at the rates specified in the applicable agreement entered into by the State Agency.

The Constitution of 1970 provides in Art. VIII, Sec. 1 that:

Section 1. General Provisions

(a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.

The General Assembly, realizing that budgetary problems would arise from time to time, authorized the binding of the State in excess of moneys appropriated as follows:

No officer, institution, department, board, or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law.

Accordingly, this Court finds that the expenditures for which claim is made was an obligation “expressly authorized by law.”

It is hereby ordered that the Claimant be awarded, in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause, the sum of One Hundred Forty-Four and 74/100 Dollars (\$144.74).

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINIONS

- 5119** Lottie Adams, Admx., Etc.
- 5137** Bobby D. Clark and Mary Clark
- 5144** Della Mae Clark
- 5413** Edward and Jean Rosmus
- 5564** Suzanne Sullivan
- 5671** Margaret Manos, Admx., Etc.
- 5676** Rita Robinson and Tamara Presnell
- 5684** David Schlossbers, Et Al.
- 5752** Richard E. Wennerberg
- 5805** George Hood and Myrtle Hood

- 5840 Ruby Miller, Et Al.
- 5924 Doris Ann Scoughton, Admx., Etc.
- 5949 Dudley Porter, Admr., Etc.
- 5970 Kenneth Colley, A minor Etc.
- 6592 Joseph Gutstadt
- 6634 A-1 Ambulance Service, Inc.
- 6650 Edith Hansen; Richard G. Hansen; Individually, Et Al.
- 6679 A-1 Ambulance Service, Inc.
- 6681 A-1 Ambulance Service, Inc.
- 6683 A-1 Ambulance Service, Inc.
- 6783 A-1 Ambulance Service, Inc.
- 6832 Connie J. Parkinson, Executrix, Etc.
- 6847 James E. Stingley, Admr., Etc.
- 6898 Savin Business Machines Corporation
- 6903 A-1 Ambulance Service, Inc.
- 7021 Sheila Healy
- 7054 ITEK Business Products
- 7057 Phillip Taylor
- 7092 Lava Rosilyn Redmon, Admx., Etc.
- 7099 Omer M. Zubchevich
- 73-24 Washington University - The Mallinckrodt Institute of Radiology
- 73-142 Bernard J. Wessel
- 73-145 Thomas Samuel Adams
- 73-167 Robert W. Pursley, Et Al.
- 73-179 Western States Mutual Insurance
- 73-184 Theresa E. McElyea
- 73-193 Terry Burke
- 73-194 Robert D. Daily
- 73-241 James Sturm
- 73-305 Mary Lanenga
- 73-342 Louise Kocal
- 73-346 Queen Ester Calvin (deceased)
- 73-395 Michael Wicker
- 74-36 Illinois Association of Highway Engineers, Etc.
- 74-98 Freddie Lockett
- 74-127 Margaret Brown, Admx., Et Al.
- 74-194 Lawrence Stone
- 74-237 William R. Kearney
- 74-372 Memorial Hospital, Etc.
- 74-378 Mildred L. Vallery
- 74-434 Cleath Wadsager
- 74-541 Scherer Equipment Company
- 74-546 Elijah Barren

74-547	Nelson Weaver
74-586	State Farm Mutual Auto Insurance Company
74-596	Lawrence Movers
74-619	Paul Burgus and Thomas Zboralski
74-621	Malcolm L. Little, Jr.
74-634	A. B., Mildred Mullinax, Etc.
74-693	Charles McCorkle, Jr.
74-697	Jake Sipe, Et Al.
74-758	Andrew Nikolie
74-784	Mobil Oil Corp., Etc.
74-813	Paul Weinstein
74-818	Passavant Memorial Area Hospital Association
74-819	Phillip M. Gonge
74-836	Antoni Gaudyn
74-863	ITT Continental Banking Co., Inc., Etc.
74-869	Commonwealth Edison
74-870	Barbara J. Wallace
74-881	Texaco, Inc.
74-889	Egyptian Concrete Company
74-892	Rhoda Stem, Admx., Etc.
74-895	Susan Zeigler
75-14	Myers-Sherman Company
75-75	Brian C. Carlson, A minor, Etc.
75-85	The Field and Shorb Company
75-86	The Field and Shorb Company
75-87	Commonwealth Edison Company
75-129	Morehouse and Wells Company
75-131	Robert James Bodziach
75-133	George A. Jones
75-182	James Starnes
75-198	Marilyn Peron, Individually, Etc.
75-210	Donald Taylor
75-225	Maurice Mitchell
75-228	Margaret N. Visny, Admx., Etc.
75-244	Peter Anditis, Individually, Et Al.
75-260	Frank A. Henenberg
75-261	Willie Kimmons
75-262	Donald Austin
75-356	The North Vermillion Community School Corporation
75-362	Calumet Adjustment Bureau for Anesthesia Service
75-366	Pamela Brown, Et Al.
75-372	Agnes McConkey, Et Al.
75-375	B. W. B. Enterprises, Inc.

- 75-389 John Michael Klein
- 75-392 **3M** Business Products Sales, Inc.
- 75-403 Walter Leach
- 75-431 Da-Com Corp. — Central Microfilm Service Corporation
- 75-522 John J. F. Kellar
- 75-540 William Udovich, Sr., Etc.
- 75-621 Marjorie Holmes
- 75-659 Mansion View Lodge, Inc.
- 75-727 Jack R. Gray
- 75-728 Arthur F. Giuliani
- 75-733 Bankers United Life Assurance Company
- 75-744 Michael Mory
- 75-752 M. A. Navabi, M.D.
- 75-757 Thomas E. Miller
- 75-812 Carol Kitchell
- 75-832 Thomas Pierce
- 75-904 W. J. Borak
- 75-911 Holiday Inn of Carbondale
- 75-913 Colt Industries, Fairbanks Weighing Division
- 75-949 Jennie L. Bart, Admx., Etc.
- 75-955 Hyland Electrical Supply Co., Inc.
- 75-958 Edward S. Fusek
- 75-963 Koto Tanaka
- 75-964 Gary L. Stoudt
- 75-967 Norman A. Keadle, Et Al.
- 75-984 Commonwealth Edison Company
- 75-1009 Texaco, Inc.
- 75-1012 James Cowley, Frank Wilks, and Linda Wilks
- 75-1022 Marvin J. Schwarz, M.D.
- 75-1050 Illinois Bell Telephone Company
- 75-1065 Sol's Currency Exchange, Inc.
- 75-1158 Fisher Scientific Company
- 75-1159 Fisher Scientific Company
- 75-1161 Fisher Scientific Company
- 75-1202 Motorola, Inc.
- 75-1206 James A. Schaefer and Sandra L. Schaefer
- 75-1208 C. E. Beadle
- 75-1240 Paul K. Reimer
- 75-1272 Carl S. McDowell
- 75-1298 Village of Lenzburg
- 75-1302 Memorial Hospital, Chester, Illinois
- 75-1308 Gokmen Ergun
- 75-1353 American Association of School Administrators

- 75-1357 Mettler Instrument Corporation
- 75-1381 Daniel Callham
- 75-1399 Outdoor Recreation, Inc.
- 75-1407 American Hospital Supply Corporation
- 75-1409 Reba B. Jensen
- 75-1414 Gerald Chatman
- 75-1415 T. Baker
- 75-1416 Charles Kidd
- 75-1422 Milton Brown
- 75-1435 Praeger Publishers, Inc.
- 75-1442 International Communications Corporation
- 75-1459 Kroch's and Brentano's
- 75-1464 Commonwealth Edison Company
- 75-1474 George A. Cichon
- 75-1477 Reo Movers and Van Lines, Inc.
- 75-1516 Donald Baranowsky
- 76-44 Air Illinois
- 76-55 United Home Bank and Trust Company
- 76-85 Walter Charles York
- 76-86 Thomas J. Jochim
- 76-87 Michael Reid
- 76-89 Elbert Hunter
- 76-96 Mobil Oil Credit Corporation, A Foreign Corporation
- 76-111 David Parker
- 76-112 Oliver H. Martin
- 76-113 Magnus Seng
- 76-123 Consolidated Freightways
- 76-161 Harvey J. Gable
- 76-166 Dr. E. A. Ulrich
- 76-182 Valley National Bank
- 76-191 The Singer Company
- 76-227 Elizabeth Ann Reifsnyder, Etc.
- 76-242 Globe Glass and Trim Company
- 76-262 Catherine E. Hood
- 76-270 Springfield Marine Bank and Park Realty
- 76-277 Donald P. Satchell
- 76-339 Addressograph-Multigraph
- 76-345 William F. Nissen
- 76-381 Edwin Cox and Vince Perez
- 76-501 Addressograph-Multigraph
- 76-502 Addressograph-Multigraph
- 76-505 Addressograph-Multigraph
- 76-549 Meadowlark Farms, Inc.

76-574	Talbert Equipment Company
76-616	Addressograph-Multigraph
76-618	Addressograph-Multigraph
76-681	Robert E. Eckstein
76-683	Max K. Hoover
76-701	Addressograph-Multigraph
76-760	Easter Seal Society
76-840	St. Francis School for Exceptional Children
76-936	Sheraton Inn - Springfield
76-940	Sheraton Inn - Springfield
76-945	Sheraton Inn - Springfield
76-1030	Chicago Communication Service Inc.
76-1091	Illinois Division of Forestry
76-1155	Mary Miller, Etc.
76-1265	Barnes Hospital
76-1323	L. S. Lowenthal, M.D.

CONTRACTS-LAPSED APPROPRIATION

When the appropriation from which a claim should have been paid has lapsed, the Court of Claims will enter an award for the amount due Claimant.

6255	Illinois Power Company	\$2,827.75
6880	Karen M. Paoli	15.00
7005	Star Builders, Inc.	3,207.02
7052	ITEK Business Products	262.70
7058	Standard Register Company	162.79
73-281	Visi Flash Rentals, Inc.	850.75
73-354	Foster G. McGaw Hospital	3,763.61
73-412	Maryville Academy	10,697.90
74-41	Dean Business Equipment Company	651.50
74-48	Hurst-Rosche Engineers, Inc.	8,910.92
74-184	Smith and Wesson Electronics Company	150.00
74-284	Foster G. McGaw Hospital	1,085.45
74-285	Foster G. McGaw Hospital	2,134.87
74-286	Foster G. McGaw Hospital	4,053.95
74-287	Foster G. McGaw Hospital	606.90
74-356	Brokaw Hospital	94.00
74-462	Springfield Internal Medicine Associates, S. C.	35.00
74-485	Springfield Internal Medicine Associates, S. C.	25.00

74-560	B & J Redi Mix Concrete	380.35
74-614	LaPerla Movers	270.50
74-626	Alexian Brothers Medical Center, Inc.	16,994.86
74-633	Technicon Instrument Corporation	780.00
74-640	Preventi-Med Corporation	14,856.78
74-650	Maryville Academy	4,020.20
74-665	William B. Krause	234.30
74-694	Charles McCorkle, Jr.	125.30
74-696	Charles McCorkle, Jr.	661.25
74-876	Foster McGaw Hospital	360.00
75-21	Union Oil Company of California	1,025.90
75-73	Edgewater Hospital	4,899.65
75-97	Gunthrop-Warren Publishing Company	1,262.08
75-110	Cohasset Associates, Inc.	1,432.90
75-140	Satellite Industries, Inc.	37.50
75-141	Satellite Industries, Inc.	37.50
75-194	Rita George	1,597.21
75-215	Exxon Company, U.S.A.	75.05
75-329	Danville Redipage, Inc.	51.27
75-332	Chicago and Northwestern Transportation Company	177.20
75-360	Richard J. Sink	522.84
75-370	McKeown Phalin Chevrolet, Inc.	409.04
75-387	Illinois Auto Electric Company	15.75
75-390	E. D. Etnyre and Company	190.38
75-391	Uldine W. Beck	525.00
75-409	Gary E. Butcher	17.90
75-452	Gulf Oil Corporation	5.33
75-471	Alexander Movers	619.00
75-482	Western Materials Company	3,424.87
75-495	Gulf Oil Corporation	6.01
75-500	Dean A. Wenzelman	364.36
75-520	Helen J. Scrutchions	1,153.22
75-594	Ted Benson Dodge, Inc.	2,262.24
75-595	Reo Movers and Van Lines, Inc.	1,900.00
75-596	Health and Hospitals Governing Commission of Cook County	2,817,110.36
75-603	S. Meltzer and Sons	165.00
75-605	Laser, Schostok, Kolman and Frank	3,340.00
75-622	Northern Illinois Gas Company	518.79
75-650	Ronald W. Olson	25.52
75-694	Motorola, Inc.	1,897.25
75-725	Barber-Coleman Company	1,803.76

75-726	Malcolm S. Kamin	85.00
75-730	The Park Layne Company	568.48
75-743	Mendota Community Hospital	476.80
75-744	James R. DeStefano, Robert Dianant, Et Al.	13,017.89
75-748	Vanessa C. Thomas	58.88
75-783	Rosa L. Newhouse, Pamela Maskey, Et Al.	84.54
75-801	Information Design, Inc.	900.16
75-802	Morton Salt Company	7,374.01
75-810	Metro Reporting Service	1,750.35
75-815	Chicago Tribune	708.71
75-816	Chicago Tribune	621.32
75-818	Metro Reporting Service	249.90
75-819	West Side Rentals	1,504.50
75-822	Patrick C. O'Day	750.00
75-826	University of Chicago	5,629.38
75-842	Thermo Electric Corporation	9,320.00
75-853	Monroe, The Calculator Company	1,225.18
75-855	Barnes Hospital	671.85
75-859	Mary Sue Altman, Et Al.	1,217.48
75-867	Donald Williams	179.82
75-869	Mayron R. Crenshaw	265.00
75-874	Northeast Community Hospital	506.30
75-879	William E. Holland	75.00
75-882	Walter H. Gregg	3,811.50
75-891	West Side Organization Health Services Corporation	6,424.56
75-893	D. Adolphus Rivers	2,187.05
75-896	Ella M. Zinnerman	330.02
75-897	Lora J. Svaniga	68.40
75-906	Continental Insurance Companies: Fireman's Insurance Company of Newark, N. J.	24,580.00
75-909	John T. Mapel, Jr.	7,381.90
75-911	Holiday Inn of Carbondale	27.30
75-920	Hendrix Town and Country	17.75
75-923	Varityper Division of AM Corporation	1,625.00
75-924	Forum 30 Ramada	1,003.20
75-932	Max Shaps	855.00
75-933	Riveredge Hospital	145.15
75-937	Overhead Door Company	269.03
75-978	Western Contractors	158.49
75-981	West Publishing Company	174.00
75-986	West Publishing Company	1,480.00
75-1008	Michael Reese Hospital	335.00

75-1017	Marvin J. Schwarz, M. D.	910.00
75-1018	Marvin J. Schwarz, M. D.	500.00
75-1028	Colt Industries, Fairbanks Weighing Division	46.40
75-1030	Colt Industries	533.39
75-1031	Colt Industries	550.00
75-1042	Novak, Carlson and Associates, Inc.	7,000.00
75-1043	Novak, Carlson and Associates, Inc.	8,700.00
75-1048	International Harvester Company	11.14
75-1058	Mercy Center for Health Care Services	685.31
75-1059	Paul E. Kern	137.87
75-1060	Premier Industrial Corporation	103.67
75-1064	Central Service Company	58.74
75-1080	S. Stein and Company	270.00
75-1081	Olsten's of Chicago	191.81
75-1089	Byron Johnson's Office Products, Inc.	15.44
75-1095	William J. Weigel, M.D.	325.00
75-1098	John M. Van Landingham, M.D.	20.00
75-1104	Earl T. Henry	551.05
75-1105	BankAmericard	801.49
75-1107	Moms S. Telechansky	187.50
75-1108	Montgomery Ward	179.65
75-1110	Standard Oil Company	467.33
75-1118	Catholic Charities, Diocese of Rockford	784.58
75-1125	Keenan Printing Company	2,224.00
75-1126	Ray Rex, Macon County Sheriff	123.81
75-1128	Riveredge Hospital	10,774.04
75-1129	Riveredge Hospital	2,242.51
75-1131	Edwin H. Mittelbush and Edward M. Tourtelot, Jr.	2,510.00
75-1133	Susan Bellow	40.75
75-1134	Elma E. Dressen	638.86
75-1135	Mary E. Eddings	688.02
75-1140	Walter H. Gregg	5,752.75
75-1144	Mutual Contracting Company	12,336.00
75-1149	Illini Hospital	388.92
75-1150	Rock Island Franciscan Hospital	468.36
75-1151	Addressograph-Multigraph Corporation	2,270.88
75-1154	McHenry Hospital	647.80
75-1156	American Management Association	48.50
75-1171	Flink Company	78.04
75-1173	Obstetric and Gynecologic Associates	250.00
75-1176	Illinois National Bank	562.65

75-1178	Chris Christiansen d/b/a Chris Plumbing and Heating	45,464.85
75-1179	Commonwealth Edison Company	290.16
75-1181	Illinois Bell Telephone Company	729.55
75-1197	Brokaw Hospital	542.35
75-1198	Ross A. Reinheimer	134.22
75-1202	Motorola, Inc.	1,141.55
75-1203	St. James Hospital	452.90
75-1204	North American Van Lines	100.00
75-1205	Globe Glass and Trim Company	68.79
75-1211	West Publishing Company	60.00
75-1216	Bohle and Frank, P. S. C.	324.00
75-1217	Yvonne Boice	192.32
75-1218	Standard Oil	666.76
75-1220	Laboratory Data Control	1,454.10
75-1222	Bel-Art Products	11.03
75-1225	Northern Illinois Gas Company	7,550.37
75-1228	Lexington House Corporation	2,606.92
75-1230	International Communications Corporation	2,256.00
75-1231	Riverside Hospital	141.30
75-1232	E. W. Brown Motors, Inc.	40.20
75-1234	Multigraphics Division	858.00
75-1235	Breit and Johnson Sporting Goods, Inc.	1,562.44
75-1236	Motorola, Inc.	883.00
75-1237	Merchants Environmental Industries, Inc.	950.68
75-1241	Denise H. Hopkins	92.91
75-1243	Sullivan Chevrolet	253.59
75-1251	Edgewater Hospital, Inc.	2,594.75
75-1252	The Children's Hour Pre-School	3,140.00
75-1254	Technicon Instrument Corporation	13,170.00
75-1257	John A. Logan Junior College	100.80
75-1267	Springfield Catholic Charities	288.90
75-1268	Lake Bluff/Chicago Homes for Children	971.71
75-1269	Neal Electric Company	2,513.93
75-1271	Village of Bartlett Cook and DuPage Counties	132.00
75-1281	Lakeland Publishers, Inc.	72.00
75-1284	Hammer School, Inc.	813.00
75-1287	Ivan Swinney's Service	117.72
75-1288	P. N. Hirsch Company	114.28
75-1303	P. A. Bergner	157.42
75-1305	Bruning Division	386.96
75-1311	Grand Spaulding Dodge	116.28
75-1312	Grand Spaulding Dodge	263.97

75-1313	Grand Spaulding Dodge	100.65
75-1314	Corn Belt F.S., Inc.	36.81
75-1315	Corn Belt F.S., Inc.	117.98
75-1316	William H. Birch and Associates, Inc.	1,587.95
75-1318	American Institute of Certified Public Accountants	30.00
75-1319	Beckley-Cardy Company	526.44
75-1322	John M. OBrien	71.28
75-1323	C. D. Metzmaker, M. D.	470.00
75-1324	IBM Corporation	507.38
75-1329	Isaac Holloway	176.48
75-1333	Burlington Northern, Inc.	600.00
75-1334	Pekin Memorial Hospital	456.25
75-1337	Palumbo Excavating Company	482.00
75-1338	J. Paige Clousson	120.00
75-1340	Cryovac Division, W. R. Grace and Company	1,053.50
75-1345	Gamma Photo Labs	20.47
75-1346	Motive Parts of America, Inc.	112.51
75-1349	David W. Reichard Plumbing and Heating Company, Inc.	11,334.40
75-1354	A. M. Varityper Division	317.00
75-1355	Wabash Tape Corporation	2,362.50
75-1356	Mettler Instrument Corporation	197.10
75-1358	Victor Duncan, Inc.	49.58
75-1360	Scientific Products	1,310.13
75-1363	Eugene C. Swager, Guy E. Johnson, Et Al.	4,159.87
75-1364	Jonathan Robinson	192.00
75-1367	Multigraphics Division	1,852.00
75-1368	Multigraphics Division	434.52
75-1369	Multigraphics Division	100.00
75-1370	Multigraphics Division	138.96
75-1374	Elliott Equipment Company	1,425.00
75-1376	Ford Tractor Division	17,200.00
75-1377	Fisher Scientific Company	862.19
75-1383	Ramada Inn	13.65
75-1384	St. Mary's Hospital	344.85
75-1385	St. Mary's Hospital	689.70
75-1386	St. Mary's Hospital	594.50
75-1387	St. Mary's Hospital	642.00
75-1388	St. Mary's Hospital	206.91
75-1389	St. Mary's Hospital	594.40
75-1390	St. Mary's Hospital	513.60
75-1391	St. Mary's Hospital	68.97

75-1392	St. Mary's Hospital	689.70
75-1410	National Railroad Passenger Association	206.89
75-1411	National Railroad Passenger Association	39.00
75-1417	Edward F. Masters	1,282.50
75-1423	A. B. Dick Products	284.74
75-1425	J. C. Larson Company	3,359.19
75-1426	IBM Corporation	7,997.91
75-1428	A. J. Gerrard and Company	114.00
75-1433	Atlantic Richfield Company	78.76
75-1434	George M. Carnahan	155.53
75-1438	Atlantic Richfield Company	78.76
75-1439	General Foods Corporation: Hotel and Restaurant Coffee Service	803.60
75-1446	Kirkland and Ellis	502.97
75-1448	Howard Johnson Motor Lodge	58.80
75-1449	Siroos Fanaipour	40.00
75-1450	Brodhead-Garrett Company	6,193.50
75-1456	Kroch's and Brentano's	31.50
75-1457	Kroch's and Brentano's	16.70
75-1458	Kroch's and Brentano's	17.45
75-1460	Kroch's and Brentano's	14.45
75-1461	Kroch's & Brentano's	10.70
75-1462	Riverside Hospital	401.00
75-1473	Michael Reese Hospital	1,558.50
75-1478	Quint Cities Drug Abuse Council, Inc.	1,369.50
75-1480	Fishman's Sporting Goods Company, Inc.	318.00
75-1487	R. Herschel Manufacturing Corporation	680.51
75-1497	Bruning Division Addressograph-Multigraph	619.87
75-1498	Sullivan House, Inc.	2,225.00
75-1500	Mercy Hospital	4,061.92
75-1503	County of Cook, A Body Politic and Corporation	2,333.32
75-1504	Mt. Carmel Lumber Company, Inc.	340.16
75-1505	Shepard's Citations, Inc.	218.00
75-1506	Robert H. Logan	65.20
75-1507	Ray Graham Association for the Handicapped	100.00
75-1510	Irene Shelton	115.38
75-1522	Marcley Oil Company	411.52
75-1526	A. L. Grootemaat and Sons, Inc.	4,952.00
76-1	Benny Stare	30.17
76-9	J. Scott Swaim	551.25
76-13	GTE Information Systems Service Company, Inc.	128.00
76-14	Little Company of Mary Hospital	724.45

76-15	Addressograph-Multigraph Corporation	120.00
76-37	M. S. Ginn and Company	96.38
76-38	Air Illinois, Inc.	85.92
76-42	Air Illinois, Inc.	104.00
76-43	Air Illinois, Inc.	28.64
76-48	Air Illinois, Inc.	78.00
76-56	Central Illinois Light Company	3,453.60
76-61	Law Bulletin Publishing Company	1,239.84
76-62	J and B Office Supplies	411.10
76-82	Addressograph-Multigraph Corporation	128.80
76-94	Mobil Oil Credit Corporation	217.61
76-97	Mobil Oil Credit Corporation	120.62
76-98	Mobil Oil Credit Corporation	1,186.78
76-99	Mobil Oil Credit Corporation	51.68
76-100	Mobil Oil Credit Corporation	217.27
76-101	Mobil Oil Credit Corporation	692.52
76-102	Mobil Oil Credit Corporation	26.20
76-103	Mobil Oil Credit Corporation	36.66
76-104	Mobil Oil Credit Corporation	1,195.92
76-105	Mobil Oil Credit Corporation	464.02
76-106	Mobil Oil Credit Corporation	35.36
76-108	Ida Robinson	416.00
76-109	Winkler Motor Service, Inc.	16,538.95
76-110	Linco Welding Supply	283.73
76-114	Barnes Hospital	787.95
76-115	Gale Research Company	149.25
76-116	Gordon Foster Home	177.60
76-124	House of Good Sheperd	1,463.13
76-127	Material Service Corporation	4,701.87
76-130	Andrew Bajonski	335.50
76-131	International Business Machines Corporation	12,600.00
76-139	Beardstown Hospital	128.36
76-142	O.A.S. Computer Service Company	2,450.20
76-153	Ronald J. Tucker	104.08
76-154	Charles W. Robinson	104.08
76-165	Johnson Controls, Inc.	3,143.00
76-171	St. Vincent's Hospital of St. Louis	183.70
76-175	Dato V. Olivero	2,190.68
76-184	Sam's 24 Hour Towing	307.52
76-185	Elmer M. Walsh, Jr. as Trustee of the Estate of Kenneth and Rose Palicki, Et Al.	5,000.00
76-190	Lt. Joseph P. Kennedy, Jr., School for Exceptional Children	501.92

76-197	Motive Parts Company of America, Inc.	59.40
76-201	Wildman, Harrold, Allen and Dixon	2,847.35
76-202	Northwest Community Hospital	1,998.50
76-203	Northwest Community Hospital	4,160.55
76-204	Council of State Governments	5.54
76-223	Joan A. Mauch	252.00
76-229	Goodyear Tire and Rubber Company	430.08
76-231	Means Services	29.80
76-239	Lutheran Medical Center	5,600.58
76-249	Kraus Manufacturing and Equipment Company	33.50
76-251	Educational Diagnostic Center, Bradley University	50.00
76-257	Bloomington-Normal Ford Tractor	80.36
76-258	Platt, Inc.	227.52
76-279	Jenkins, Merchant and Nankivil	2,605.00
76-286	John Mealey, Jr., M.D.	833.50
76-287	Indiana University Hospital	3,518.74
76-293	Bruning Division Addressograph-Multigraph Corporation	993.82
76-316	Addressograph-Multigraph Corporation	250.40
76-331	Material Service Corporation	555.73
76-334	Aid to Retarded Citizens, Inc.	69.70
76-337	Homer L. Chastain and Associates, Et Al.	1,412.50
76-343	ICN Pharmaceuticals, Inc.	95.95
76-348	Visually Handicapped Managers of Illinois, Inc.	103.20
76-363	Riveredge Hospital	1,067.75
76-373	Addressograph-Multigraph Corporation	184.10
76-375	Kankakee Truck Equipment Company	40.18
76-387	Helen Elaine Glass	540.54
76-389	Murphy, Timm, Lennon and Spesia	700.00
76-393	Allied Heating Company, Inc.	9,988.00
76-420	Violet R. House, R. N.	1,193.32
76-422	The Brown Schools	260.00
76-423	West Publishing Company	50.00
76-425	Marsha E. Murray	311.24
76-428	Poplar Bluff Regional Diagnostic Clinic	2,329.03
76-430	Doctors Memorial Hospital	201.02
76-442	Grafton Telephone Company	80.45
76-445	Joan M. Kuhn	168.00
76-446	Patrick E. Maloney	125.00
76-449	St. Vincent's Hospital of St. Louis, Missouri	997.50
76-453	St. Mary of Providence School	870.21
76-458	Howard K. Priess	250.00

76-463	63rd and Maryland Building	71.35
76-468	National League for Nursing	691.25
76-469	Litsinger Motor Company	346.92
76-470	Litsinger Motor Company	459.19
76-472	Naperville Industrial Sales, Inc.	2,482.00
76-473	Addressograph-Multigraph Corporation	226.13
76-475	Springfield Blueprint Company	70.82
76-481	Louise M. Wilson	16.00
76-483	Saint Vincent's Residential School	124.02
76-487	Tony Mattozzi	80.13
76-488	Community General Hospital	39.50
76-492	Anthony Luminella	789.20
76-494	Karen M. Eberlein	195.00
76-495	Emil A. Peterson	112.55
76-517	Fern Long	200.00
76-518	Machula Business Interiors	1,605.35
76-524	Walter Dorus, M. D.	772.50
76-526	Lutheran General Hospital	1,754.00
76-527	Consolidated Biomedical Labs	220.50
76-531	Baptist Medical Center of Oklahoma	2,216.83
76-532	W. W. Grainger, Inc.	1,286.59
76-538	Commonwealth Edison Company	89.76
76-539	Commonwealth Edison Company	8,499.83
76-540	Charles Equipment Company	896.16
76-542	Texaco, Inc.	37.38
76-547	Creatron Services, Inc.	647.80
76-551	Jean H. Maier	105.00
76-552	Illinois Belli and Belli Company	2,800.00
76-554	Washington Hilton Hotel	175.46
76-559	Metro Plumbing, Inc.	7,211.25
76-560	Mau-Glo Day Care Center for Mentally Retarded Children	5,000.00
76-565	Parkland College	132.00
76-569	Lawrence Zelic Freedman, M.D.	810.00
76-571	Mallow Products, Inc.	11,465.07
76-574	Edward J. Griffith	61.78
76-575	Clearbrook Center	176.76
76-579	Nelson A. Harris and Associates	796.00
76-584	Henry C. Henderson, Jr., M. D.	402.00
76-585	WAY Clinic, Inc.	40.00
76-587	Horace D. Thomas, Supt., Dekalb County Schools	625.00
76-588	Forest W. Price, A.C.S.W.	105.00

76-592	R. S. Landauer and Company	14.40
76-593	Great Lakes Microfilm Company	768.00
76-597	Hancock-Henderson Quill, Inc.	64.80
76-598	Bell and Gustus, Inc.	469.12
76-599	Co-op Medical Systems	177.92
76-601	J. O. Pollack and Company	1,901.86
76-609	Ronald Myron Bargunz	75.00
76-611	Smith Oil Corporation	210.50
76-612	Ralph M. Reitan, M. D.	522.76
76-619	The Flax Company	84.00
76-620	Robbins, Coe, Rubinstein, and Shafran, Ltd.	900.00
76-621	James M. Rochford, Supt. of Police, Chicago Police Department	6,636.24
76-624	Blondelle W. Thomas	83.78
76-625	Morgan Drive-Away, Inc.	813.64
76-626	Technology Service Corporation	850.00
76-628	Norma Lea Kamphaus	54.00
76-635	Record Systems, Inc.	150.00
76-638	Wilbert T. Heyman	75.43
76-639	Garnetta J. Brown	212.54
76-640	IBM Corporation	3,313.60
76-641	Berwyn AMC, Inc.	3,823.92
76-642	United Physicians Services	40.00
76-643	El Valor Corporation	3,313.60
76-648	Chanen's, Inc.	803.87
76-649	Burnham City Hospital	275.83
76-651	Harry A. Monroe	70.00
76-653	Tony Frevert	75.00
76-655	The Jewish Hospital of St. Louis	60.00
76-663	Eve Larocca	204.10
76-665	Renaissance House	990.00
76-672	Lutheran Welfare Services	1,329.36
76-673	Bismarck Hotel	136.22
76-676	Transamerica Computer Company, Inc.	272.00
76-686	John A. Gordon	150.75
76-687	Marathon Oil Company	6.90
76-688	J. D. Brodsky, M. D.	303.00
76-690	State House Inn	1,193.34
76-692	John F. Kramer, M. D.	480.00
76-697	Root Brothers Mfg. and Supply Company	813.14
76-699	Roberts and Porter, Inc.	141.60
76-703	Addressograph-Multigraph Corporation	203.66
76-706	Means Service Center	127.50

76-710	Ebsco Subscription Services	37.50
76-718	Carl R. Englund, Jr.	4,685.74
76-719	Shirley M. Blisset	29.25
76-727	Joseph J. Kostur	123.26
76-729	Staley Express, Inc.	30.42
76-730	Baker and Taylor Company	43.89
76-734	Federal Sign and Signal Corporation	238.80
76-735	Edward Don and Company	36.90
76-736	Ronald Smalls	117.00
76-737	A. and R. Welding Supply Corporation	1,257.00
76-738	Skelly Oil Company	461.83
76-739	Huston Patterson Corporation	4,310.78
76-743	Lawrence and Ahlman, Inc.	9,528.00
76-745	Shell Oil Company	90.52
76-746	Hellman, Odata and Kassabaum, Inc.	10,176.27
76-747	Lawrence Fruik	626.40
76-748	Gulf Oil Company	12.57
76-749	World Window Cleaning Company	725.00
76-758	Midwest Supply Company, Inc.	230.80
76-759	Edward J. Schlicksup, Jr.	172.18
76-764	Dalee Oil Company, Inc.	7.14
76-765	Iroquois Association for Retarded Children	726.00
76-767	Sheltered Village	6,669.29
76-768	Marklund Home	1,070.00
76-772	Aid to Retarded Citizens, Inc.	252.20
76-775	Kenneth M. McCaffree, M. D.	366.44
76-776	All State Travel Bureau	136.73
76-777	Arthur Rubloff and Company	30,450.07
76-779	Marsha Foutch	61.20
76-781	Salem Children's Home	174.02
76-788	Bethany Home, Inc.	532.50
76-789	Corley International, Inc.	671.33
76-790	Katherine W. Wright, M. D.	1,510.00
76-791	Better Books Company	215.27
76-800	Industrial Coating Company	15,366.55
76-801	Blackman Plumbing, Heating and Air Conditioning	4,583.00
76-802	Marathon Oil Company	5.79
76-804	Louis R. Silverman	40.64
76-806	Hassan A. Barakat, M. D.	93.00
76-812	Kelly Services, Inc.	496.00
76-816	County of Randolph	2,250.00
76-817	Donna L. Miller	77.00

76-824	Englewood Electrical Supply Company	258.40
76-827	Capital City Paper Company	147.85
76-832	Faryl's Pharmacy	213.20
76-834	Illinois State University	301.30
76-835	Renaissance House	797.30
76-842	Fox-Stanley Photo Products, Inc.	220.50
76-846	Mansion View Lodge, Inc.	40.26
76-848	Lee, Hanlon and Shumway	540.00
76-851	Supelco, Inc.	32.78
76-852	Xerox Corporation	440.00
76-857	Effingham County Association for the Mentally Retarded	247.00
76-859	UNIVAC Division	668.50
76-864	Edward D. Kusta	985.41
76-865	Moline Radiology Associates, S. C.	11.00
76-869	Memorial Medical Center	594.40
76-871	Fairview Hospital	107.56
76-873	Smith Oil Corporation	12,393.02
76-878	Area Publishing Corporation d/b/a The Trib	43.60
76-879	Commonwealth Edison Company	77.83
76-880	Flair Business Interiors	4,770.45
76-887	IBM Corporation	63,842.20
76-891	Computer Microfilm International	135.79
76-897	Fischer Scientific Company	270.18
76-898	Reuzen Office Equipment Company	2,248.47
76-899	Fairmont Hotel	114.32
76-904	Plaza Nursing Center	6,285.01
76-908	Psychiatric Associates, Inc.	640.00
76-911	International Harvester Company	7,669.25
76-912	Mary L. DeFlorio	153.64
76-913	Fox Hill Home	946.40
76-919	Palmer House	46.48
76-923	Lauchner and Lauchner, Inc.	675.68
76-925	Sidney Dillon	120.00
76-926	West Publishing Company	12.00
76-927	Frank W. Mucha	23.28
76-928	Ozark Air Lines, Inc.	1,091.02
76-930	Anderson Brothers Storage and Moving	90.00
76-931	Drs. Auner and Vincent, LM.	102.00
76-933	Scientific Products Division of American Hospital Supply Corporation	179.17
76-934	W. Schiller and Company	41.00
76-947	Sheraton Inn-Springfield	146.30

76-949	Mettler Instrument Corporation	55.00
76-952	Champaign Children's Home	644.89
76-953	Walter Lawson Children's Home	2,410.40
76-954	Sears, Roebuck and Company	2,455.67
76-955	Good Shepherd Manor	221.00
76-959	IBM Corporation	214.48
76-963	Jeanne Wurtzinger	59.10
76-966	Stiles Office Equipment Company, Inc.	161.52
76-971	State Employees' Retirement System of Illinois	16.71
76-981	Litsinger Motor Company	6.98
76-986	Stanton Equipment Company	136.45
76-989	Mark Kellnar	97.60
76-990	Paul D. Crawford	212.56
76-992	Industrial Coating Company	1,159.90
76-993	Atlantic Richfield Company	3,666.00
76-994	Fisher Scientific Company	292.00
76-998	Sargent-Welch Scientific Company	303.15
76-999	St. Mary's Hospital	355.60
76-1000	Rockford Memorial Hospital	1,835.25
76-1001	Warshawsky and Company	32.90
76-1003	Meyer Material Company, Not Inc.	90.00
76-1004	Gerald Provencal	256.39
76-1005	Robert Jackson	20.70
76-1008	Hiway House	267.75
76-1009	Montgomery Ward and Company	761.22
76-1011	Loyola University Medical Center	1,950.00
76-1017	UNIVAC	1,287.00
76-1023	The Lexington House Corporation	2,146.09
76-1025	Ramada Inn-Mt. Vernon	52.52
76-1026	Fisher Scientific Company	479.68
76-1029	Wendy S. Bailie	225.00
76-1035	Fisher Scientific Company	3,068.25
76-1039	Richard W. Yore, M. D.	50.00
76-1040	Albert Eldon Garver	149.60
76-1043	Sun Oil Company	35.89
76-1045	Sun Oil Company	32.46
76-1046	South Central Oil Company	16.62
76-1050	Little Angels Nursing Home	2,085.99
76-1051	Arnold Levin	7.20
76-1054	Thompson-Hayward Chemical Company	780.00
76-1055	Giuffre Buick, Inc.	22.70
76-1056	Nursing Center of Canton	834.17

76-1058	Effingham Builders Supply Company	1,984.05
76-1060	Hamilton Industries	2,452.00
76-1062	Wayne R. Andersen	842.75
76-1074	Robert G. Burkhardt and Associates, Inc.	2,961.63
76-1076	Scott, Foresman and Company	364.21
76-1078	Central Office Equipment Company	1,750.43
76-1080	Central Office Equipment Company	2,487.85
76-1082	Central Office Equipment Company	415.72
76-1086	Fischer Equipment Company	5,238.00
76-1087	Central YMCA Schools	567.50
76-1088	Mutual Truck Parts Company, Inc.	921.08
76-1092	Iowa State University	5.18
76-1096	United Parcel Service	38.85
76-1101	National Forest Products Association	135.00
76-1103	General Electric Company	3,997.00
76-1107	Kayle/Patio, A Division of Cinevideo International Corporation of Illinois	4,815.00
76-1108	Sidley and Austin	1,216.92
76-1109	IBM Corporation	85.80
76-1110	IBM Corporation	852.66
76-1111	H and R Plumbing, Heating and Electric Company	18,651.17
76-1112	Watson Equipment Company	1,545.95
76-1113	IBM Corporation	65.25
76-1117	Sheraton Inn-Springfield	13.27
76-1121	The Brenco Corporation	4,992.00
76-1122	Fox-Stanley Photo Products, Inc.	427.00
76-1130	Platt Business Products	26.00
76-1132	Patricia D. Brock	128.50
76-1133	Gibbs Laboratory	525.00
76-1134	Graham, O'Shea and Wisnosky, Architects and Planners, Inc.	355.88
76-1137	Ames Color-File Corporation	1,806.20
76-1141	Robert W. Riles	112.52
76-1146	Uniroyal, Inc.	255.82
76-1147	Cornelius E. Toole	375.00
76-1148	St. Elizabeth Hospital	11,707.78
76-1150	Lynne Bundensen	475.00
76-1152	Federal Sign and Signal Corporation	742.50
76-1156	Kewaunee Scientific Equipment Corporation	844.00
76-1157	Dick Blick Company	13.60
76-1159	Canady Laboratories, Inc.	326.50
76-1167	Verkler GMC, Inc.	4.83

76-1170	Life Printing and Publishing Company, Inc.	84.48
76-1173	A. K. Busch and Associates, Ltd.	345.00
76-1174	Deaconess Hospital	1,087.48
76-1175	Adolescent and Adult Psychiatric Services	3,860.00
76-1177	Monitor Labs, Inc.	412.97
76-1182	Mary Nell Chew	58.20
76-1187	Lee Marie Kotnour	88.73
76-1189	Cassens and Sons	19.05
76-1190	Ste. Genevieve County Memorial Hospital	627.27
76-1191	L. H. Ochs, M.D., Ltd.	70.00
76-1195	Texaco, Inc.	18.12
76-1199	Guardian Angel Orphanage	546.00
76-1201	Alton American, Inc.	53.81
76-1203	A. C. Nielson Company	7,800.00
76-1205	A. C. Nielson Company	7,800.00
76-1208	Jerry Lacy and Associates	338.41
76-1209	Goodyear Tire and Rubber Company	266.77
76-1211	Gerber-Barthel Truck and Tractor Company	266.67
76-1212	Strandquist Motor Company	88.13
76-1214	Medical Radiological Group	28.33
76-1215	Fox-Stanley Photo Products, Inc.	74.80
76-1216	McDow Memorial Medical Clinic	18.00
76-1218	Holiday Inns, Inc.	233.52
76-1219	National Welding Supply Company, Inc.	1,180.00
76-1222	American Airiines, Inc.	397.46
76-1229	Central Baptist Children's Home	1,200.00
76-1230	Jenkins and Roller Company, Inc.	2,163.38
76-1231	B. F. Goodrich Tire Company	1,566.24
76-1238	Sycor, Inc.	415.50
76-1240	Hopkins Road Equipment Company	293.70
76-1241	Keystone Auto Plating Corporation	456.60
76-1242	Board of Trustees, Southern Illinois University	5,000.00
76-1243	William F. Lennon	950.00
76-1246	Hoel-Steffen Construction Company	9,960.90
76-1249	Auto Parts Headquarters, Inc.	4.69
76-1255	Ronnie's Audio Visual	1,807.00
76-1257	Psychiatric Services	35.00
76-1259	Urbano Censoni	308.83
76-1261	Texaco, Inc.	137.72
76-1268	Modern Office Methods	25.00
76-1271	International Harvester Company	213.55
76-1273	William Lynch, M. D.	450.00

76-1275	Federal Signal Corporation	78.00
76-1279	Random Electronics, Inc.	2,536.00
76-1283	Vernell Justice d/b/a Miller House	2,921.00
76-1285	M. Allen Line	224.01
76-1286	Ralph Vancil, Inc.	6,073.55
76-1287	Federal Signal Corporation	4,222.34
76-1288	Group Health Association of America, Inc.	45.00
76-1289	R. L. Koegel	485.97
76-1293	Carpetland U.S.A.	8,016.06
76-1294	Fisher Scientific Company	3,030.00
76-1295	R. L. Koegel	1,012.31
76-1299	The Nicholls Stone Company	1,001.98
76-1300	H. M. Chandler, M.D.	165.00
76-1304	C. R. Boyce	53.50
76-1313	Curtin Matheson Scientific, Inc.	181.38
76-1316	Cambridge University Press	30.00
76-1327	Office Supply Company, Inc.	30.99
76-1329	Clark Oil and Refining Corporation	23.88
76-1335	International Harvester Sales and Services	550.52
76-1344	Mobil Oil Credit Corporation	32.79
76-1345	Mobil Oil Credit Corporation	109.43
76-1346	Mobil Oil Credit Corporation	68.61
76-1349	Plains Television Corporation	100.00
76-1350	Plains Television Corporation	42.00
76-1354	Plains Television Corporation	32.50
76-1355	Plains Television Corporation	40.25
76-1358	Community College of Denver	409.00
76-1359	Stephen Contro, M. D.	15.00
76-1366	Eastern Illinois University	20,418.00
76-1373	Linkon's Auto Supply Company	36.79
76-1377	American Airlines, Inc.	72.73
76-1380	The Baker and Taylor Companies	19.39
76-1384	Computer Machinery Corporation	585.00
76-1387	Roger M. Pray, D.V.M.	45.00
76-1412	Blauer Manufacturing Company, Inc.	50.06
76-1424	Illini Community Hospital	78.17
76-1426	American Airlines, Inc.	276.73
76-1427	Varian Instrument Division	185.90
76-1439	Care Management d/b/a Roosevelt Square	156.00
76-1445	Matthew Bender and Company, Inc.	40.00
76-1449	Office Supply Company, Inc.	44.62
76-1450	Office Supply Company, Inc.	16.85

76-1461	Bryan Funeral Home	1,071.31
76-1464	Global Van Lines, Inc.	22.95
76-1465	Board of Trustees of Southern Illinois University	5,582.00
76-1481	Minnesota Mining and Manufacturing	172.80
76-1484	Jama Wagner	61.65
76-1490	Reynolds Motor Company	255.00
76-1491	Arthur Young and Company	171.62
76-1500	Gruter Foundation, Inc.	656.25
76-1504	The Lexington House Corporation	852.00
76-1514	Sheraton Inn	3.48
76-1523	Laurel Haven School	484.00
76-1539	M. H. Rizk, M.D.	125.00
76-1551	Thomas P. Clark	20.00
76-1557	Henry W. Patterson	150.00
76-1559	Francis C. Lee, M. D.	50.00
76-1563	IBM Corporation	1,366.33
76-1574	W. Schiller and Company	41.00
76-1578	West Publishing Company	18.00
76-1579	G. A. F. Corporation	25.41
76-1592	Educational Technology Publications, Inc.	41.25
76-1599	Mental Health Associates, S.C.	69.00
76-1611	Feurer Construction Company	2,075.00
76-1630	California Personnel Guidance Association	5.50
76-1649	Holiday Inn	12.08
76-1653	Doug Sitter d/b/a Doug's Shoe Store	188.85
76-1662	NCR Corporation	2,199.25
76-1664	Sharp Electronics Corporation	493.85
76-1668	Huston-Patterson Corporation	53.12
76-1688	Riverside Hospital	281.30
76-1691	Huston-Patterson Corporation	23.85
76-1695	Braniff Airways, Inc.	184.74
76-1714	Manpower, Inc.	142.50
76-1717	Joann Chizevsky	728.26
76-1753	Midstates Appliance and Supply	21.48
76-1760	Morrison-Rooney Associates, Ltd.	785.00
76-1772	Marathon Oil Company	19.82
76-1805	Ace Glass, Inc.	90.85

STATE COMPTROLLER ACT—REPLACEMENT WARRANTS

If the Comptroller refuses to draw and issue a replacement warrant, or if a warrant has not been paid after one year from date of issuance, persons who would be entitled under Ch. 15, Sec. 210.10, Ill.Rev.Stat., to request a replacement warrant may file an action in the Court of Claims for payment.

75-99	American Association of School Administrators	\$52.00
75-117	Paul Louis Bauer	5,551.59
75-323	Exchange National Bank as Trustee under Trust No. 22482	125.00
75-488	Scarecrow Press, Inc.	15.00
75-607	Village of Kampsville	376.56
75-775	Betty F. Altrogge	293.02
75-811	Ruth G. French	2,172.96
75-821	David Epstein	592.31
75-850	Mrs. J. Robert Ford	130.00
75-860	Eugene Kucinas	54.42
75-945	Dale Peterson, Executor of Estate of Benjamin Peterson	88.42
75-946	Mrs. Heidi Seelhoff	142.00
75-1032	Leonard Bolado	25.00
75-1061	85th and Burley Currency Exchange	260.13
75-1079	Klug Currency Exchange, Inc.	116.53
75-1090	Village of Pingree Grove, Illinois	33.76
75-1091	Village of Pingree Grove, Illinois	34.41
75-1092	Village of Pingree Grove, Illinois	83.67
75-1093	Village of Pingree Grove, Illinois	111.06
75-1106	Andrew Kotecki	94.50
75-1115	Juan F. Carrillo	77.00
75-1119	Linda Freeman Sizemore	63.42
75-1123	Rita J. Woodzien	34.69
75-1132	Castree Brothers Pacemaker Food Store	647.40
75-1141	Donald Roos	139.13
75-1142	City Collector C. B. O. H.	2,384.25
75-1152	Ralph R. Gebert, Jr.	18.49
75-1153	Jay A. Gondek	15.79
75-1165	Walter J. Johnson, Inc.	198.15

75-1166	Mary Redmond	383.32
75-1167	Mary Redmond	7.00
75-1169	Helen J. Cremeens and James Phelen, Etc.	182.94
75-1175	Gertrude H. Evanich	30.00
75-1183	Wireflex, Inc.	30.00
75-1190	Thomas C. Marthinsen	24.81
75-1191	Ignacio Hernandez	82.44
75-1195	George Willaredt	345.15
75-1196	Florence Plato	24.46
75-1209	Jerry Lee Thedford	24.64
75-1215	Rev. G. John Wilson	917.84
75-1224	William L. Kerby	24.68
75-1227	Charles Cullen	4.00
75-1250	First National Bank in Chicago Heights	40.82
75-1256	Valley Bank and Trust Company	314.95
75-1258	Robert F. and Elizabeth M. Barnas	53.72
75-1259	Jacqueline Zabinski	26.00
75-1261	Patricia L. Dahl	257.30
75-1262	Clark Oil and Refining Corporation	158.48
75-1263	Earl and Cleta Roberson	49.69
75-1264	Theodore and Freida Armstrong	87.74
75-1275	Marilyn E. Standerfer	56.34
75-1277	Henry R. Rahn	29.68
75-1278	Harold and Mary Hinderman	49.07
75-1283	Harrolle and Malone Oil Company	4,675.00
75-1285	Robert A. Aldrich	11.63
75-1290	Richard Mosley, Jr.	19.95
75-1297	Ann M. Puskaris	178.09
75-1300	Robert T. and Leslie L. Langan	28.87
75-1301	Rank Audio Visual Ltd.	69.60
75-1304	Frank Seban	6.00
75-1306	Albert Lee Thomas	10.74
75-1307	Harry and Opal McGee	36.00
75-1321	Leo Majewski	8.83
75-1327	Virginia H. Osmolak	49.00
75-1328	John S. Plunkett	22.37
75-1331	Poly-Tex Electronic Fabricators	412.50
75-1335	Willie Thomas	44.09
75-1336	North Towne National Bank of Rockford	24.00
75-1339	Jeannie Glover	25.42
75-1342	Robert Anderson	48.00
75-1343	Lemroy Barrow	17.90

75-1347	Glenda Spears	21.79
75-1348	Dorothy Heinsimer	7.83
75-1352	Sam D. Anderson	10.94
75-1359	Jean Loy	34.00
75-1362	Yvonne Dattala	51.11
75-1372	Edith Bunting, Ralph H. Bunting, and Ross J. Bunting	318.00
75-1373	Indium Corporation of America	38.24
75-1375	James C. and Mary L. Petkus	21.38
75-1378	Duane W. Schluter	36.00
75-1380	Samuel R. Sabo	110.00
75-1382	Cyril Nierman	17.75
75-1394	Dorothy M. Prange	14.34
75-1395	Agnes M. Thomas	44.41
75-1400	Joseph James Trombini	100.00
75-1401	Republic Bank of Chicago	483.77
75-1402	Republic Bank of Chicago	179.30
75-1403	Republic Bank of Chicago	280.71
75-1404	Republic Bank of Chicago	282.71
75-1405	Republic Bank of Chicago	8.00
75-1406	L. B. and Auguster Hoover	49.32
75-1413	Kathleen M. Bovenizer	24.00
75-1418	Arthur and Marjorie Dorau	223.85
75-1419	Larry R. Gudenrath and Debra A. Gudenrath	67.00
75-1420	Thelma M. Sturgeon	2.63
75-1421	Harry A. Rurup, Jr.	7.90
75-1427	Robert W. and Darlene Lodge	120.42
75-1429	Elsie M. Whan	113.00
75-1436	Rea T. Markin	320.21
75-1437	David J. Buda	25.34
75-1440	William C. and June L. Radunz, Jr.	28.84
75-1441	Raymond and Betty Grim	48.00
75-1444	Bruce Munesue	25.00
75-1445	Montgomery and Josephine Addison	72.12
75-1447	Fermin and Marie L. Pinela	48.00
75-1451	Don and Beatrice McKean	44.01
75-1453	James Toal	71.68
75-1455	National Cleaners	1,050.00
75-1465	David Arnold Bunge	6.41
75-1466	Michael J. Howlett, Secretary of State	8.00
75-1467	Michael J. Howlett, Secretary of State	5.00
75-1469	Patrick and Janice Rush	19.84
75-1476	Roy E. and Sharon L. Soller	26.00

75-1481	Lawrence M. Costello	344.43
75-1483	Carrier Air Conditioning Company	220.37
75-1484	Thomas F. Stack and Marjorie Stack	19.95
75-1485	Ivan Elez	24.45
75-1486	Gabriel and Farivicxa Amaya	48.90
75-1488	John B. and Rosalind M. Smith	47.74
75-1489	Hartwig and Lena Hanson	49.25
75-1493	Pat Zimmerman	9.29
75-1494	USV Pharmaceutial Corporation	688.66
75-1495	Arthur Hamlet	17.65
75-1501	Nilda O. Sosa	424.43
75-1509	International Scientific Industries, Inc.	79.50
75-1511	Addressograph-Multigraph	3.26
75-1512	Edward Smithy	6.83
75-1513	Larry M. Cimino	19.45
75-1514	Lorraine Lopatkiewicz	19.00
75-1517	John Tolczyk	20.00
75-1518	Janet Magnani	30.00
75-1519	Happy Foods	120.87
75-1520	Barbara Bandy, Administratrix of Estate of W. J. McDonald	449.24
75-1521	William and Christine Brown	74.00
76-5	Terry Riffner	6.00
76-8	Henry and Viola Moore	54.00
76-11	Vincente and Ledia Serrano	193.38
76-57	Richard T. Guttman	9.42
76-59	West and Mary Rudolph	36.00
76-60	Edward L. and Nancy P. Boone	228.54
76-64	Herbert S. Sarnoff	5.00
76-66	Greg Delaney	21.00
76-67	Jean Mary Bsrtane	12.80
76-69	Globe Glass and Trim Company	50.60
76-74	Ralph M. Hunter	89.93
76-75	Wayne Choate, Administrator of Estate of Lena Shovan	1,188.18
76-76	James H. Williams	3.46
76-77	Richard G. and June Gross	290.70
76-78	Eunice O. and Patricia Lindsey	74.00
76-79	Ivery and Alice Ruffin	49.00
76-80	Sammuel and Muriel Gaines	50.00
76-81	Jose and Eulalia Reyes	12.00
76-83	Jack G. and Elaine Roberts	30.78
76-84	Gladys Mosley	52.27

76-90	Vasil and Anita Eftimoff	16.11
76-92	Tom Tuohy	23.28
76-107	Edward and Valeria Konstanty	43.00
76-120	Village of Kirkland	801.85
76-121	Sandra R. Saltsman	24.00
76-122	Peter and Eleanor Pocius	81.10
76-132	George Sceravelli, M. D.	741.17
76-133	Thomas and Carol Henry	52.63
76-134	Scott B. and Christine Robb	24.30
76-136	Jesus and Marjorie Laseon, Jr.	54.16
76-143	Jane Callahan	53.90
76-144	Joanne Bohiw	24.21
76-148	Estate of Madelyn Christenson	9.57
76-150	Cinderella Johnson	25.00
76-151	Theodore Pytlewicz	40.60
76-152	Russell H. Classen	187.50
76-157	Eugenio D. and Lydia Montanez	31.38
76-158	Earl and Amelia Herigodt	13.66
76-159	William and Joyce Roberts	47.48
76-160	Economy Currency Exchange, Inc.	39.28
76-162	James N. and Wanda Gordon	22.80
76-163	Sandra L. Hinsley	14.23
76-167	Mr. and Mrs. Richard Van Eperan	40.00
76-168	James Butler, Jr.	11.35
76-172	Edward M. Levin, Jr.	63.30
76-176	Janice A. Dudley	25.41
76-177	Robert Kelly	141.00
76-178	John N. and Jewell G. Nash	56.00
76-179	Edward W. Doubet	12.01
76-180	Alfred Johnson	24.89
76-181	Sherill D. and Jane Confort	393.92
76-183	Bill and Diamanto Paraskevopoulos	30.63
76-188	Frank and Anna Spillman	560.60
76-194	Daniel and Charlotte Olsson	79.00
76-198	Grace M. Moms	49.01
76-205	Richard W. Sniezek	22.49
76-206	Shirley and Augustus Dahr	26.26
76-207	Donald and Janet Bly	80.62
76-208	Refugio and Juana Gomez	99.07
76-209	Edward <i>Ross</i>	12.00
76-210	Jerry Hanson, M. D.	29.48
76-211	McKinley Becton, Jr.	132.74

76-212	Streator Industrial Supply	36.60
76-213	William H. and Verlee Suttles	46.83
76-216	Merchants Currency Exchange, Inc.	84.43
76-217	Z. Huq, M. D.	490.00
76-218	Richard Handy	337.72
76-219	Helen Ruth Chaudoin, Guardian of the Estate of Schell D. Chaudoin	50.00
76-220	Darrell Jay Rudd	15.86
76-224	Mae Pikulski	19.19
76-225	Stephen P. Troy	20.47
76-226	LaFreda M. Pravidica	16.55
76-230	Richard J. and Fera Wagner	11.65
76-235	Florence Bertsch	19.95
76-236	Mary Anne Lohan	18.08
76-237	Russell G. and Diane Whewell	69.86
76-238	Parley T., Jr., and Judy H. Foster	63.00
76-246	Peter P. Briscoe	12.01
76-247	Stephen Stein	15.98
76-248	WJBC Communications	24.48
76-252	Theresa Shanks	23.77
76-253	William J. and Denise Walsh	32.00
76-254	Spencer Joanaime	24.57
76-255	Mark Frazier	18.63
76-256	Robert R. Robin, D. D. S.	438.08
76-259	United States of America	15,688.97
76-260	Robert C. Boza, Jr.	19.00
76-261	Morris Trachtman	14.03
76-266	William Brueggemeyer	10.00
76-267	Antonio Alverez	68.00
76-268	Janet Shalks	25.18
76-273	Russell H. Classen	120.00
76-274	Sandra M. Zaucha	24.07
76-275	Patricia Marie Molony	14.00
76-276	David Carlson	18.33
76-278	Orlando Collado	25.10
76-283	Gregory L. Cox	12.48
76-284	Joseph S. and Adeline S. Zegar	20.39
76-288	Alexander Andresianas	46.00
76-289	Robert T. and Marilyn Trunk	43.40
76-290	Robert G. Wertzler	307.86
76-291	Leatha B. Crumble	49.93
76-292	Norman L. and Laura M. Wonnell	96.73
76-295	John C., Jr. and Kayle D. Kenney	18.23

76-297	William Myrtis Armstrong, Sr.	49.64
76-298	Stephen W. Krumpack	26.00
76-304	Robert L. and Mary A. Gray	48.24
76-305	Jacob and Clara Gassner	44.00
76-307	Cynthia J. Huizenga	15.57
76-312	August J. and Margaret A. Bogusch	65.67
76-314	Hermalinda G. Rodriquez	66.00
76-317	Randy E. and Karen S. Harlin	23.55
76-318	Carol L. Lagowski	60.47
76-319	Michael J. Howlett, Secretary of State, State of Illinois	8.00
76-320	Jessie Whitfield	9.00
76-321	Charles and Barbara Coats	71.40
76-322	Julian C. Sauter d/b/a Suburban Currency Exchange	49.25
76-323	Piyush K. Tandon	20.64
76-324	Timothy P. Gill	17.36
76-325	Harold C. Mautner, Administrator of the Estate of Donald W. Anton	652.38
76-327	William Sloan	22.77
76-328	Dennis W. and Sharon A. Jereb	51.82
76-329	U.S. Leasing Corporation	101.31
76-332	Sangamon State University	1,069.95
76-335	Jewel Foods	120.00
76-338	James C. and Doris J. Crick	31.47
76-342	Carrie K. Hinkle	403.47
76-344	Aurora National Bank	28.58
76-350	Leslie L. Henson	169.56
76-351	Arlene Silverman	9.72
76-352	Jewel Foods	389.00
76-353	Larry and Carol Sue Yates	88.00
76-354	Otto P. and Betty R. Ahl	12.00
76-355	Oscar Davis, Jr.	50.00
76-356	David C. McClenthen	16.86
76-366	Tommy and Rhea Neal	41.41
76-367	American National Bank and Trust Company	23,012.21
76-368	Donald H. and Norma J. Knautz	18.53
76-369	Alma B. Teece	140.00
76-370	Robin Bieber	1.55
76-371	Dr. Mary Lohr	201.07
76-372	Hattie L. Nelson	52.00
76-374	Willie J. Hawthorn	2.63
76-376	Russell W. Pennell	12.95

76-377	Pauline Walker	237.28
76-379	William G. Moran	24.00
76-380	West Publishing Company	55.00
76-382	Thomas and Sara Myers	4.72
76-385	David L. Bos	5.98
76-388	Ralph C. Rippell, Jr.	23.57
76-392	Russell Johns Associates, L	121.80
76-396	Ron K. and Barbara Nielsen	46.33
76-397	Tony K. Hudson	8.11
76-400	Warner Naill	483.20
76-401	Jacob W. Myers	123.33
76-402	Edmund C. Secor	45.92
76-403	Evelyn Hershey	180.00
76-404	Wilma W. Geldrich	77.32
76-405	Susan E. Craft	29.86
76-406	Ona B. Williams	164.13
76-407	Leona E. Britton	163.88
76-408	Phyllis Telser	350.94
76-409	Wilma K. Brown	96.84
76-410	Edna O. Elsner	409.05
76-411	Blanche R. Martelle	396.56
76-412	Emma H. Voelcker	134.66
76-413	Karl W. Noltemeier	4,329.00
76-414	Walter H. Woll	236.69
76-415	Carolyn Loggins	762.22
76-416	Bess C. Gholson	234.20
76-417	Vivian R. Goettel	651.68
76-419	Joseph and Mary Healy	83.35
76-429	Lewis W. Fischer	159.71
76-432	Clark County Highway Department	1,177.00
76-433	Joseph Ruffin Ellis, Jr.	7.16
76-436	Robert L. and Niki Maggio	49.06
76-439	Huberto Eloida Sordo	29.44
76-448	David C. Caldarelli, M. D.	200.00
76-450	The Rock Island Bank	20.33
76-452	Michael J. Howlett, Secretary of State, State of Illinois	30.00
76-454	Gladys Johnson	560.84
76-455	Cambridge Instrument Company, Inc.	2,750.00
76-460	Anton and Gladys Wimmer	40.65
76-461	Herman A. and Shirlee I. Grammar	102.60

76-462	Robert and Dorothy M. Glemser	138.44
76-465	David C. and Phyllis A. Karn	261.36
76-466	Continental Illinois National Bank and Trust Company	237.00
76-467	Continental Illinois National Bank and Trust Company	112.35
76-471	National Bank of Joliet	420.32
76-474	Carol Lynn Wayne	19.88
76-477	Burt Plumbing Service	125.00
76-478	Edward and LueDell Ward	73.40
76-482	Sol Walksler	42.26
76-485	Rose C. Lambert	221.30
76-486	Armando and Margaret Travelli	55.41
76-489	Paul R. Donovan	24.46
76-529	Joe Thompson	190.43
76-534	The Illinois National Bank of Springfield as Trustee under Trust No. 13-03875	500.00
76-535	Gilbert and Diane Tonozzi	22.90
76-536	Digital Equipment Corporation	609.24
76-546	Harold and Angeline L. Hammerich	33.30
76-556	Kenneth Sokol	54.15
76-562	Thomas L. Fenn	10.84
76-563	Elmer Papp	101.15
76-567	Kenneth C. Chilmon	108.55
76-570	L. C. Daniels' Funeral Home	300.00
76-572	Celia L. Balint Mullikin	24.62
76-573	Joan E. Kaczorowski	25.19
76-577	Alan Squire	22.68
76-578	Fred B. Kleinedler	1,000.00
76-586	Harry N. Abrams, Inc.	52.54
76-589	David A. Tyner	20.00
76-590	Carol L. Tyner	25.48
76-596	Harold D. Laws	8.11
76-602	Romanoff Rubber Company, Inc.	184.37
76-608	Betty J. Gansalus	23.86
76-633	Caleb R. and Marlene Towne	136.00
76-636	Gay Lynn Hannan	24.85
76-656	Ronald Lee Harrison	160.71
76-671	Mary A. Gavin	45.71
76-700	Grune and Stratton, Inc.	84.40
76-711	Andras Sarkozy	52.86
76-712	Wayne Hammerton	122.44

76-713	Bernard Joseph Durlcin	13.32
76-716	Hettie B. Smith	138.74
76-722	David S. and Janice Spiller	61.19
76-732	Howard Gustavson, Administrator of Estate of Hilda Gustavson	1,567.63
76-733	Merilyn A. Wentz	23.02
76-741	William J. Casey, Administrator of Estate of James Martin Casey	474.50
76-750	Mabel Bragg	54.71
76-755	Diane L. Tlusty	25.78
76-757	Harold D. and Mary Lee Sunken	183.00
76-763	Henrietta Faulkner, Executrix of Estate of Laura Grider	323.50
76-771	Thomas Edwin Malone	487.17
76-783	Donna Mayes	32.50
76-793	Chicago State University Police Association	47.50
76-813	Eulogia G. Labrado	895.00
76-814	Cornelias Winbush	23.28
76-818	Richard C. and Carol L. Steinmetz	11.13
76-819	American Association of Colleges for Teacher Education	200.00
76-831	Bloomington Glass Company	965.00
76-841	Phillip W. Peloquin	811.72
76-844	Julio Abranda	27.68
76-847	Hope Ferrara	6.75
76-858	Clarence R. Lewis	150.00
76-870	Edrine Tyson Davis	13.00
76-876	John W. Adams	25.61
76-883	Stanley and Helen Pazdro	29.88
76-889	Thomas M. Joyce	36.30
76-893	Mary M. Cooper	62.44
76-894	Rick Menozi	96.00
76-895	Cleve and Betty L. Talkington	101.21
76-901	Mary Ann Walker	23.27
76-903	Village of Bannockburn	1,165.73
76-905	Catherine Fricke	20.01
76-907	Barabas Funeral Home	350.00
76-909	Joseph Juraszek	120.00
76-918	Barbara M. Bowman	281.50
76-921	Alma June Kohl	186.14
76-929	Ralph G. and Eva M. Ipcinski	11.93
76-956	New York Graphic Society, Ltd.	70.43

76-979	Wells Fargo Bank	92.54
76-996	Jane K. Wong	25.48
76-1010	Merna C. Blue	126.83
76-1016	John F. Hartleb	3,302.18
76-1021	Walter R. Johnson, Executor of Estate of Glenn B. Forest	152.09
76-1024	Charles D. and Judith A. Follman	47.83
76-1027	John S. Watson, Heir of Cleo Aileen Hudson	219.44
76-1028	University of Illinois at the Medical Center	1,112.00
76-1032	Swannie Zanders	467.23
76-1033	Gary W. Bateman	162.08
76-1048	H. Jake Olbrich Oil Company	198.24
76-1064	Harwell Industrial Research	125.69
76-1077	Robert and Sandra G. Giffin	56.00
76-1102	Phillip Gustafson	197.55
76-1104	Pamela L. Rentfro Jones	25.02
76-1120	John J. and Cary L. Hanley	24.00
76-1123	Kevin J. Peil	17.25
76-1138	Hilfinger, Asbury, Cufaude and Abels	45.90
76-1164	No. 2 DuPage Crown Finance Corporation	208.45
76-1176	Fabian J. Tasson	37.76
76-1179	Monroe Division, Litton Business System, Inc.	260.00
76-1183	A. L. Robinson, M. D.	27.00
76-1198	Joe Mitchka	56.70
76-1204	Francis E. Bergin	330.55
76-1217	Alan E. Skillman	16.00
76-1224	Huston-Patterson Corporation	190.75
76-1270	William J. Keyes	20.60
76-1276	Huston-Patterson Corporation	56.24
76-1290	James Rogers	119.35
76-1315	Glenn Strayer	235.95
76-1320	Neil W. Townsend	19.49
76-1333	Sharon Hemphill	29.73
76-1361	Frances E. Downen	20.86
76-1372	Charles H. Glick	18.11
76-1396	Priscilla Thay Patey	20.00
76-1397	Priscilla Thay Patey	10.00
76-1398	Joseph R. Shedelbower	13.66
76-1402	Alvin K. Glick	4.27
76-1415	Village Treasurer of Plymouth	1,096.44
76-1422	Faye Emma Mansfield	25.00
76-1429	John Kone	24.94

76-1432	Thomas Sharron Shubert	65.00
76-1435	Earl and Elsie Parr	43.90
76-1441	Evangeline K. Togami	17.00
76-1444	John W. Costello	63.00
76-1446	Arthur F. and Shirley M. Dhesse	52.00
76-1447	Bruce E. and Margaret Doxie	58.00
76-1458	Merrick-Upshaw Gulf Service	32.95
76-1476	Roy E. and Sharon L. Soller	26.00
76-1486	Christine L. Altes	76.45
76-1495	M and H Auto Supply	227.60
76-1496	Archie T. and Stattia A. McMullen	78.00
76-1524	Nico H. and Mary J. DeJong	15.89
76-1529	Scott Rader	157.50
76-1556	Pekin Pizza Hut, Inc.	270.72
76-1582	Bernice S. Ryan	24.75
76-1614	Howard I. and Grace McDonald	83.54
76-1634	R. K. Satterthwaite	8.00
76-1635	R. K. Satterthwaite	3.00
76-1636	Rockway Drugs	278.38
76-1641	Biblioteca De La Universidad de Salamanca	55.80
76-1644	Karen Nicol	75.00
76-1651	Nicholas and Martha Guillen	48.04
76-1652	Cynthia S. Peters	10.36
76-1659	Oceana Publications, Inc.	167.00
76-1676	Gladys Bristol	64.95
76-1697	Marilyn J. Lubbs, Executrix of Estate of Howard Peach	50.00
76-1705	Vida E. Harrison	24.00
76-1711	Terry Platt	150.00
76-1726	National Association for Women Deans, Administrators and Counselors	2.66
76-1737	Lyle Weihmeier	348.68
76-1738	Otis Watkins, Jr.	54.93
76-1765	Dan Vincent	13.71
76-1783	Richard D. and Janice L. Holloway	181.59
76-1785	Franklin D. and Peggy D. Bickel	72.00
76-1792	Leslie Bemer	90.00
76-1794	Louise B. Hammann	10.51
76-1796	Village Treasurer of Tilton	2,098.75
76-1798	Dale Fulton	227.55
76-1801	Jake Hammel	25.35
76-1802	Low Point—Washburn High School	48.00
76-1809	Millard R. and Glendia S. Meek	36.00

76-1822	Mark Trumper	12.31
76-1827	Abraham Benton	9.29
76-1839	Darlene Ross	3,288.60
76-1843	Ethel Mae Rains	22.16
76-1854	Vito Sidlau	13.36
76-1863	Alfred and Bernice Klass	341.00
76-1864	No. 2 Alton Crown Finance Corporation	587.56
76-1875	N. and R. Supreme Beauty Supply	64.50
76-1888	Jose A. and Marilou M. Lucero	52.30
76-1893	North-Holland Publishing Company	34.62
76-1896	Karl and Ruby Held	17.95
76-1921	Daniel J. Rambke	15.26
76-1923	Mary K. Rambke	24.75

CRIME VICTIMS COMPENSATION ACT OPINIONS

Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of \$200.00 or more; notified and cooperated fully with the law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victim's wrongful act or substantial provocation of the victim; and his claim was filed in the Court of Claims within two years of the date of injury, compensation is payable under the Act.

74-11	Mary Lou Garner	\$10,000.00
74-15	Wayne Bass	100.00
74-19	Mae J. Mroczak	427.24
74-20	Florence Forsner	Not Compensable
74-21	Marilyn Brown	10,000.00
74-22	Marilyn Brown	Not Compensable
74-27	Pullman Bank and Trust Company - Executor, Etc.	5,106.99

74-38	Ellen Lewis and Mary Ann Scott	2,590.00
74-49	Juan Manuel Rivera	1,376.00
74-51	Thomas A. Gokey	3,009.58
74-69	John P. Haran	2,734.48
74-72	Rosemary Simone	Not Compensable
74-73	Eddie Lee Brewer	Not Compensable
74-74	Dorothy Kendall	10,000.00
74-78	Jose A. Molinar	20.16
74-80	Bobbi B. Redmond	10,000.00
74-81	Josephine Stolf	Not Compensable
75-7	Thomas R. Miles	2,431.22
75-23	Karen L. Spencer	629.27
75-24	Frank Clark	Not Compensable
75-25	Curtis Anderson	771.10
75-28	Rose Steinhau	Not Compensable
75-29	Pearl Nails	Not Compensable
75-35	Bill G. Kapsimalis	Not Compensable
75-40	Betty L. Lohr	Not Compensable
75-42	Bernice A. Crosby	10,000.00
75-45	Franklin Medlock	10,000.00
75-54	Dolley S. Coleman	Not Compensable
75-55	Ida Smith	8,890.50
75-58	John J. Ford	Not Compensable
75-60	Sharon Allen	Not Compensable
75-61	James S. Pockross	Not Compensable
75-63	Alan J. Goldberg	10,000.00
75-69	Robert Goodwin	Not Compensable
75-72	Sandra Phillips	9,334.70
75-75	Rozell D. Dyson, Jr.	Not Compensable
75-76	Willie Robinson	10,000.00
75-81	Lena D. Daniels (Consolidated with 75-297)	Not Compensable
75-84	Levester Bryant	Not Compensable
75-85	Dolores Clemens	2,154.52
75-86	James Lee Hill	Not Compensable
75-88	Robert E. Murphy	Not Compensable
75-89	Richard J. Diliberto	Not Compensable
75-90	Theodore De Graff	665.86
75-90	Theodore De Graff	174.00
75-91	James Gravit, Beverly Gravit, Et Al.	7,113.97
75-94	Peter Pippas	10,000.00
75-96	Elizabeth Grosz	10,000.00
75-97	Steven Hancock	Not Compensable

75-103	Michael B. Lopedija	688.19
75-105	Elijah Brewer	1,563.35
75-106	Edwin E. Bell	711.70
75-107	Bruce E. Burnette	2,260.10
75-110	James Hood	1,567.75
75-117	Anthony Gentile, Jr.	1,961.40
75-123	Felix E. Espinosa	Not Compensable
75-124	Gayle M. Clark	2,817.42
75-127	William Gilleran	1,545.00
75-128	Nancy Ruth Pearson	10,000.00
75-135	Rosa Lee Hopkins Bey	10,000.00
75-142	Leroy Tyner	Not Compensable
75-143	Mark McInerney	814.69
75-148	Scott Wentz Gliddon	1,682.87
75-149	Sheron I. Tippet	10,000.00
75-151	Jimmy L. Castleberry	Not Compensable
75-152	Marguerite Ziemba	762.96
75-155	Ralph Thompson	3,234.51
75-156	Mildred Balcer	4,037.28
75-158	Dave H. Williams	1,498.07
75-159	Irene Miller	Not Compensable
75-160	John Chatterton	2,853.40
75-162	Sam King	710.17
75-164	Thelma K. Brown	Not Compensable
75-166	Genevieve Podraza	Not Compensable
75-174	Mario Chilelli	4,302.63
75-178	Berneranda Herrera	10,000.00
75-179	Margaret M. Wientczak	Not Compensable
75-189	Mary Lynn O'Conner	1,821.71
75-196	David L. McChristian	Not Compensable
75-199	Joanne M. Thatcher	10,000.00
75-200	Sammie Alexander	6,300.00
75-203	Lilia D. Echeverria	697.11
75-204	Vergie Huggins	1,159.60
75-205	Jiles Denar	8,835.10
75-212	Katherine Mallin	372.00
75-213	Donald Rogers	Not Compensable
75-214	Socorro Silva De Rios	10,000.00
75-219	Lera Gordon	Not Compensable
75-220	Celestine Johnson	Not Compensable
75-223	Rosalyn E. Williams	Not Compensable
75-227	Frankie B. Maury	Not Compensable

75-228	Anthony Contorno	80.54
75-230	Ronald W. Crowder	Not Compensable
75-231	Helen Golding	1,054.49
75-236	Charles R. Lloyd, Jr.	277.05
75-238	Theodosios Charalampous	Not Compensable
75-244	Annie T. Atkins	424.00
75-245	Donna J. Buikema	Not Compensable
75-248	Marvin Poe	21.00
75-250	Christopher Linder	1,111.05
75-251	Jean A. Duff	409.20
75-252	Gary J. Meli	211.00
75-256	Edward Ostrowski	388.26
75-258	Charles Brown	740.88
75-260	Anne E. Bresingham	1,189.44
75-264	Salvatore F. Mucerino	1,269.70
75-266	Robert Land	Not Compensable
75-270	Dennis M. Beeler	Not Compensable
75-274	Leroy Pfeifer	4,360.30
75-275	Prentes E. Smith	79.60
75-278	Ruth B. Knapp	839.94
75-281	Oscar Johnson	Not Compensable
75-282	Eddie J. Craig	Not Compensable
75-284	Marion L. Ziemba	943.20
75-286	Ramo Lejlich	385.88
75-287	Glenn Wismer	1,822.45
75-289	Garnell Gholson	Not Compensable
75-291	Calvin Aaron	Not Compensable
75-292	Helen F. Creutz	1,635.00
75-296	Ramona Johnson	10,000.00
75-297	Lena D. Daniels and Carl P. Daniels	Not Compensable
75-299	Jerome C. Pryor	Not Compensable
75-300	Kenneth C. Grover	1,219.00
75-302	David H. Black	Not Compensable
75-303	Albert H. Bach	Not Compensable
75-304	David M. Wolynia	2,079.48
75-309	Henry L. Crowley	Not Compensable
75-310	Joseph C. Ross	1,756.00
75-311	Roland T. Racette	208.07
75-314	Dennis Wilson	2,072.90
75-317	Prudencia Mendoza Castrejon	10,000.00
75-322	Veronica Gibson	Not Compensable
75-323	Lois M. DeWitt	1,888.20

75-327	Earl V. Deattie	10,000.00
75-328	Gloria Andino	10,000.00
75-329	Ezell Smith	Not Compensable
75-330	Emma Victoria Garinis	241.56
75-333	Ernest J. Hill	Not Compensable
75-334	Emma Kvacik	909.62
75-336	Joseph A. Harding	1,355.78
75-339	Marie H. Juette	1,929.58
75-341	Joseph Slode	693.07
75-344	Lorraine J. Maloy	743.75
75-345	Joanne Turner	1,105.00
75-352	Ruthie Waits	Not Compensable
75-356	Garcia Francisco	Not Compensable
75-358	Maceola Ross	10,000.00
75-359	Mary Baker	780.00
75-361	Tanya Moore	10,000.00
75-362	Kenneth E. Oglesby	Not Compensable
75-363	Robert Van De Carr	658.55
75-364	Bernice Kokosz	10,000.00
75-365	Panagiota Constat	10,000.00
75-368	Sophie (DeFranza) Arend	Not Compensable
75-369	Sandra Harris	Not Compensable
75-374	Harry Greenburg	1,001.40
75-377	Willie Buford	Not Compensable
75-379	Ann Foegel	382.05
75-380	Viola Bunesco	1,029.22
75-380	Viola Bunesco	205.20
75-381	Kadra Ahmad El Abed Issa	Not Compensable
75-382	Rose Majewski	10,000.00
75-385	Gene A. Goodwin	Not Compensable
75-386	Earnestine Merriweather	1,742.00
75-387	Rosie Givhan	10,000.00
75-391	Francisco Sanchez	Not Compensable
75-392	Lee Brown	Not Compensable
75-393	Sobih Ali	Not Compensable
75-395	Delores Duron and Reymundo Gonzalez, Jr.	10,000.00
75-396	Vlasta Bevil	Not Compensable
75-398	Helen L. Staley	113.20
75-400	James Conway	958.70
75-405	Jesse Rodriguez	Not Compensable
75-406	Mrs. David A. Wright	10,000.00
75-407	John Fields	Not Compensable

75-408	John H. Stewart	Not Compensable
75-411	Wieslaw Mlynarski	57.60
75-413	Vincente Saucedo	1,425.85
75-416	Cynthia Schafer	221.50
75-418	Moussa Dib Haidar	733.90
75-422	Byung S. Whang	230.20
75-424	Jose Lopez	Not Compensable
75-430	Emma L. Siefert	10,000.00
75-431	David E. Mielnikowski	898.98
75-433	August Dallara	4,978.26
75-435	Stella Wallas	Not Compensable
75-436	Harriet L. Steinberg	Not Compensable
75-437	Clarence D. Bolden	Not Compensable
75-439	Philip T. Miller	Not Compensable
75-442	Kazuo B. Kushida	641.15
75-443	Barbra Boyd	10,000.00
75-447	Anthony C. Zenner	Not Compensable
75-449	Donald F. Kaskey	Not Compensable
75-451	Mary S. Hansen	237.80
75-454	Seymour Cohen	Not Compensable
75-455	Ascencion Villanueva Rivera	10,000.00
75-458	Lola L. Ries	Not Compensable
75-459	Chris R. Temple	Not Compensable
75-460	Paul Fuller, Jr.	Not Compensable
75-461	Raymond T. Coates	165.21
75-462	Sandra L. and Sharon Manning	10,000.00
75-467	Elpidio Padilla	Not Compensable
75-468	James Scura	Not compensable
75-469	Robert J. Sonka	Not Compensable
75-473	Charles Matthews	10,000.00
75-475	Dorothy V. Stahl	10,000.00
75-479	Dora Schuman	181.57
75-480	Juanita Green	Not Compensable
75-484	Rose H. Ferek	1,488.18
75-489	Delores M. Akridgetowns	Not Compensable
75-491	Gerald Hansen	Not Compensable
75-494	James Earl Baumgardner	3,761.19
75-495	Leonard Macaluso	Not Compensable
75-498	William Freeney, Sr.	1,330.63
75-499	Edward G. Ashley	2,222.00
75-505	Diane Coates	1,041.00
75-507	Alberto A. Baca	1,197.50

75-508	Barbara Czarnecki	694.55
75-510	Albert W. Hildebrand	Not Compensable
75-513	Eleanor Ruggeri	10,000.00
75-515	Joyce A. Dotson	Not Compensable
75-516	Mary A. Lipinski	Not Compensable
75-522	Myrtho La Fontant	10,000.00
75-525	Stanley A. Bitout	79.98
75-528	William E. Ravenscraft	Not Compensable
75-529	Ernestine E. H. Thompson,	3,333.34
	Junius O. Thompson, Jr., and	3,333.33
	Mary Carolyn Thompson	3,333.33
75-530	Robert J. Schneider	1,274.74
75-531	Robbie R. Parker	Not Compensable
75-533	Rosetta Collins	Not Compensable
75-534	Kathleen R. Paolasini	Not Compensable
75-535	Gene Alfred Preston	Not Compensable
75-539	Charles E. Phillips	Not Compensable
75-546	Gilbert Miranda	769.75
75-549	Joseph A. Schmitz	1,120.80
75-556	Albert Catlett, Jr.	8,873.00
75-558	Marion Healy	113.00
75-560	Ayhan Eubank	Not Compensable
75-562	Arthur M. Samuels	7,705.50
75-566	Fannie Dantzler	Not Compensable
75-567	June Vitek	1,800.00
75-568	James Conway	512.70
75-572	Elizabeth J. Marshall	10,000.00
75-576	Helen I. Mladonicky	1,128.60
75-590	Roger Lee Pugh	1,462.00
75-592	Carl Radzki	10,000.00
75-594	Earl and Ernest Aibuschon	2,324.00
75-601	Thomas A. Seifert	Not Compensable
75-605	Michael Pusateri, Jr.	Not Compensable
75-606	Rufus S. Dyer	217.55
75-607	Grant Hankerson	2,192.72
75-608	Bruno J. Pacyna	6,939.30
75-616	Ronald D. Portis	6,976.85
75-619	Ethel Lee Crumpton	227.90
75-622	Etta Mae Banks	10,000.00
75-623	David Morrow	1,408.75
75-627	Edwin M. Robles	Not Compensable
75-630	Joseph Sullivan	Not Compensable

75-632	Maurice Schaffer	1,286.48
75-635	James Watkins	Not Compensable
75-637	Mary Morgan	10,000.00
75-640	Tommy Williams	1,278.51
75-641	Dean A. Robinson	1,697.83
75-642	Dean A. Robinson	1,636.67
75-644	Isiash Chostor	Not Compensable
75-646	James Hill	296.00
75-647	Jacqueline Burton	1,225.00
75-648	John Douglas Wilson	1,400.00
75-654	L. Gregory Hooper	2,067.92
75-655	Carolyn Hatfield	Not Compensable
75-660	Bethsaida Pender	302.00
75-663	Leroy Benson	Not Compensable
75-664	Vincent J. Leone	Not Compensable
75-666	Dolly Shoemaker	10,000.00
75-668	Gregg R. Fields	Not Compensable
75-672	Allen Glaser	10,000.00
75-673	Mark Zeal	10,000.00
75-675	Cleo J. Tyler	959.85
75-676	Thomas E. Mock	10,000.00
75-678	Joseph Scaminaci	2,078.00
76-684	James A. Draper	1,860.86
75-685	Colette McGivern	Not Compensable
75-686	William Matthews	Not Compensable
75-689	Luis Sanchez	Not Compensable
75-691	John Keating	428.83
75-694	Daniel L. Claybon	Not Compensable
75-696	Amy W. Fuller	Not Compensable
75-698	Mary Perry	Not Compensable
75-709	Mrs. Katherine Rossiter	Not Compensable
75-710	Thomas C. Brown	Not Compensable
75-716	Charles Midden	3,606.59
75-718	Billy J. Eldridge	1,631.31
75-719	Lillian Berland	1,254.56
75-728	Rita Sue Garfoot	3,593.36
75-729	Rita Connolley	Not Compensable
75-731	Donald A. Berger	Not Compensable
75-735	Albertina Shinn	1,800.00
75-737	Michalina Modrycky	372.22
75-738	Charlie Simpson	Not Compensable
75-739	Lynne Smith Newton	Not Compensable

75-740	Malcolm Gordon	Not Compensable
75-742	Marie Dospod	349.60
75-748	Dorothy M. Craig	Not Compensable
75-750	Ceola Sims	1,202.60
75-751	Lavanda Green	Not Compensable
75-753	Mecys Norvaisa	409.27
75-761	Mary L. Collins	Not Compensable
75-765	Maggie McDowell	10,000.00
75-766	Irene C. Simmons	10,000.00
75-772	Ramon Hernandez	Not Compensable
75-773	Isaac Snitovsky	874.34
75-774	Retha Haley	Not Compensable
75-775	Verdeen Caleb	Not Compensable
75-776	Pearson Haynes	Not Compensable
75-784	Aurtia R. Borja	2,068.75
75-787	Theophilus Sanders	Not Compensable
75-789	Clarence Slowronski	1,210.15
75-792	John Kalnicky	Not Compensable
75-794	Helen Klein	Not Compensable
75-801	Raymond J. Cooney	Not Compensable
75-809	John E. Lilton	Not Compensable
75-812	McKinley Daniels	Not Compensable
75-815	June E. Williams	Not Compensable
75-817	Raymond E. Stahl	3,038.41
75-818	Sheila McDonald	10,000.00
75-820	Danny Stark	Not Compensable
75-821	Carmen S. Marroquin	Not Compensable
75-823	Irene R. Krop	Not Compensable
75-825	Robert Robinson	368.87
75-834	Freda Brown	Not Compensable
75-847	Darnell Newell	Not Compensable
75-850	Eddie Gene Blackman	Not Compensable
75-851	Ora H. Kerr	Not Compensable
75-854	Tadashi Tad Tanaka	Not Compensable
75-860	Susan J. Olson	Not Compensable
75-867	Louis Sandobue	2,938.00
75-868	Etta Mae Haire	1,006.95
75-873	Regina A. Diehl	Not Compensable
75-874	Alice Akons	Not Compensable
75-877	Juan R. Reyes	Not Compensable
75-883	Daniel P. Sanders	Not compensable
75-885	Ernest Chaney, Jr.	Not Compensable

75-888	Carrie Meyer	Not Compensable
75-894	Anthony Wallace	5,681.89
75-899	Thomas Brown	Not Compensable
75-904	Alexander Kajkowski	1,969.93
75-909	Maud R. Scott	853.00
75-912	Joseph Clark	2,811.47
75-914	Will Heard, Jr.	Not Compensable
75-915	Harold E. Gibson	Not Compensable
75-916	Alfonso Harris	88.93
75-918	Earl F. Henry, Jr.	Not Compensable
75-922	Charlotte Erdman	1,319.36
75-924	Elbert L. McGowan	Not Compensable
75-929	Maxine E. Johnson	Not Compensable
75-931	Dorothy A. Eldridge	Not Compensable
75-932	Julia E. Novak	741.60
75-934	Walter Richard Zimmerman	Not Compensable
75-938	Eleanor V. Jarman	Not Compensable
75-944	Gladys Williams	2,000.00
75-947	Robert Leal	Not Compensable
75-948	Debra Ann Lovendahl	456.55
75-949	Edward Jensen, Jr.	Not Compensable
75-951	Ruth Dillon	Not Compensable
75-953	John Widmar for Linda De La Fuente	7,960.00
75-955	Johnnie E. Watson	Not Compensable
75-960	Donna Ozment	743.00
75-963	Elva S. Cockerham	Not Compensable
75-965	Margaret Parker	2,281.82
75-966	May Elia Brown	Not Compensable
75-1286	Samuel G. Pierson	4,048.04
76-2	Effie Hardy	Not Compensable
76-5	Gloria J. Donovan	Not Compensable
76-8	Darrell Smith	1,928.85
76-22	Moon-Joo Choi	10,000.00
76-29	Pamela Stoppa	500.00
76-31	Mable Perry	2,083.09
76-36	Gladys Williams	Not Compensable
76-44	Mary C. Danheiser	1,767.34
76-49	Frederic Talierero	Not Compensable
76-54	Gary C. Ford	Not Compensable
76-55	Thelma Fitzpatrick	Not Compensable
76-60	John T. Murphy	Not Compensable
76-61	Eugene Blue	Not Compensable

76-62	Clara V. Voheler	Not Compensable
76-66	Frank Fronek	Not Compensable
76-69	Randall J. Bean	6,581.90
76-78	Alice L. Cooper	160.00
76-83	Freida Constiner	Not Compensable
76-84	Irene McCluggage	325.26
76-87	Betty Bunn	507.40
76-96	Max M. Bezen	Not Compensable
76-99	Lela Mae Westbrooks	Not Compensable
76-106	Herbie K. Tolbert, Sr.	1,380.30
76-132	Sondra Sue Achenbach	Not Compensable
76-134	Irene Leinen	1,889.40
76-137	Mariano S. Ceballos	289.50
76-138	Chris Okoro	Not Compensable
76-143	Barbara Podsada	Not Compensable
76-145	Larry Day	Not Compensable
76-148	Scott Wentz Gliddon	1,682.87
76-152	Kenneth E. Ross	228.86
76-159	Ray Taimi	Not Compensable
76-171	Cleo Eugene Smith	206.00
76-173	Gerardo Courtade	Not Compensable
76-174	Ben F. Williams	4,358.83
76-175	Harold Wright	Not Compensable
76-183	Venora Dorsey	Not Compensable
76-184	Gerald Arthur Straub	Not Compensable
76-190	Delbert R. Mills	Not Compensable
76-199	Maxine Henton	375.00
76-212	Edwin O. Wardahl	554.50
76-213	The First Trust and Savings Bank of Watseka, Illinois	1,284.40
76-217	Mary Williams	2,304.56
76-219	Angela R. Badger	10,000.00
76-221	Susan Robinson	Not Compensable
76-222	Marie Brewer	Not Compensable
76-225	Beverly B. Korito	Not Compensable
76-233	Dorothy C. Looby	Not Compensable
76-238	Henri Noel	Not Compensable
76-240	JoAnn Smith	Not Compensable
76-245	Denton L. Terrell	756.30
76-262	Robert William Muckenstrum	Not Compensable
76-287	Glenn Wismer	1,822.45
76-310	Marvin G. Mathis	Not Compensable

76-339	Billie Duncan and Ernest Duncan	1,582.09
76-343	James P. Mehillos	10,000.00
76-347	Ruth E. Christenson	Not Compensable
76-353	John L. Birdsong	3,236.00
76-360	Minnie Lee	Not Compensable
76-368	Roger Lee Folks	Not Compensable
76-373	Alvin Norman	1,668.00
76-413	Hilda L. Moll	Not Compensable
74-419	Ray D. Vaughn	853.55
76-420	William H. Zinkan	Not Compensable
76-472	Gail R. Hofbauer	Not Compensable
76-492	Ruby Conley	576.55
76-506	Paul R. Briggs	1,122.15
76-529	Leo E. Murray, Sr.	Not Compensable
76-539	Shirley R. Young	Not Compensable
76-592	Dennis Carl Kennedy	Not Compensable
76-608	Gary Olson	Not Compensable
76-718	Ray Stanley O'Hanesian	445.50
76-763	Thomas E. Brewer	16.09
76-769	Michael Don Harris	Not Compensable

STATE EMPLOYEES' BACK SALARY CASES

Where, as a result of a lapsed appropriation, miscalculation of overtime or vacation pay, service increase, or reinstatement following resignation, and so on, a State employee becomes entitled to back pay, the Court will enter an award **for** the amount due, and order the Comptroller to pay that sum, less amounts withheld properly for taxes and other necessary contributions, to the Claimant.

74-52	Freeman Humphrey	\$12,293.98
75-649	Desmond C. Fortner	19,055.18
75-1111	Lelia M. Smith	902.27
75-1112	Chesalyne L. Quint	902.27
75-1113	Wilma Collins	902.27

75-1201	Laverne Allen	162.41
75-1219	Lois R. Cofer	1,467.20
75-1240	Paul K. Reimer	141.62
75-1253	Albric Vanderbeke	17,953.01
76-4	Leslie Talbott	961.57
76-187	Linda Jones	72.42
76-281	Robert L. Pellman	1,353.01
76-341	Lois M. Platt	653.23
76-480	John Marley	75.00
76-506	Kenneth Gifford	50.25
76-512	Gayles Jones	90.92
76-523	Evelyn Spinner	63.25
76-637	Barbara Koch	1,390.29
76-654	Charles E. Dalby	358.53
76-678	George D. Holzhauer	340.43
76-679	Robert E. Prince	67.57
76-680	Francis M. Cashmer	425.76
76-683	Betty Jane Finley	202.00
76-696	Charles S. Fowler	263.96
76-874	Beverly A. Dynes	124.89
76-1018	William Wasko, Jr.	191.94
76-1254	Debora K. Schinzler	224.64

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT OPINIONS

Where Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

00051	Margaret M. Raymond	\$10,000.00
00062	Thomas Adams, Sr.	10,000.00
00071	Elizabeth Cullotta	10,000.00
00073	Mary K. McKevitt	10,000.00
00075	Verdun W. LeMons	20,000.00
00076	Jewel Dandurand	20,000.00
00080	Judith Ann Meister	20,000.00
00081	Philmena Glynn	20,000.00

00084	Irene C. Simmons	20,000.00
00085	Leora Brown	20,000.00
00088	Loni Cerkoske	20,000.00
00090	Margaret Abrams	20,000.00
00091	Rosie Collom	Not Compensable
00093	Rebecca Lee Doubet	Not Compensable
00094	Vernia Farmer	20,000.00
00095	Barbara Higgins	20,000.00
00097	Anita LeMar	20,000.00
00098	Agnes Moore	20,000.00
00099	Elizabeth A. Frahm	20,000.00
00102	Camille Farnsworth	20,000.00
00103	Rita E. Paulauskas	20,000.00
00106	Helen M. Davis	20,000.00

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CASES ARGUED AND DETERMINED
IN THE COURT OF CLAIMS
OF THE STATE OF ILLINOIS

REPORTED OPINIONS

FISCAL YEAR 1977

(July 1. 1976 through June 30. 1977)

(No. 5439—Claimant awarded \$12,250.00.)

**W. R. MOUNT, ET AL., Claimants, *us.* STATE OF ILLINOIS,
Respondent.**

Opinion filed May 11, 1977.

HARRIS, HOLBROOK & LAMBERT, Attorneys for Claimants.

WILLIAM G. CLARK, Attorney General; LEE MARTIN, Assistant Attorney General, for Respondent.

FENCES—maintenance. Ill.Rev.Stat. Ch. 54, Sec. 2, providing the rights of a landowner if his neighbor fails to maintain a fence, requires that the injured Claimant construct a fence and proceed at law for his cost in doing so. State not liable under this statute where no construction was undertaken by Claimant.

DAMAGES—mitigation. Common law in the absence of statute requires a Claimant to mitigate damages, and turning cattle loose in an unfenced area constitutes aggravation of damages.

TRESPASSER—duty owed to. Cattle entering onto property of State constitutes trespass, and were subject to protection only from intentional harm.

NEGLIGENCE—due care. One who negligently alters the natural flow of water on the property of an adjacent landowner, and thereby causes damages, is liable to the adjacent landowner.

SPIVACK, J.

The claim which the Court is required to consider pleads two distinct factual situations, each of which allegedly gives rise to compensable damages in favor of Claimants and against the State. The first involves the State's alleged failure to maintain a water gate which was on a river which crosses through the contiguous properties of the State and of the Claimants, which alleged negligence was the proximate cause of a flooding of Claimants' land and destruction of crops; the second involves the State's refusal to erect and/or maintain a division fence between its property (the Vienna Branch of the Illinois State Penitentiary) and that of Claimants, causing some of Claimants' cattle to stray onto the State's property where they were lost.

The cause was assigned to Commissioner Robert F. Godfrey, who conducted a hearing receiving the testimony of various witnesses, the numerous documents and exhibits which were admitted into evidence, and the arguments and briefs of counsel. The Commissioner has filed his report, the transcripts, the exhibits, and briefs with the Court, all of which are now before us. The following facts were established by Commissioner Godfrey:

Warden Hollis McKnight, for and on behalf of the Respondent, made an oral agreement with W. R. Mount about the division fence where the prison line adjoins the lands of Robert Mount. It was agreed between McKnight and Mount that the Respondent was to build and maintain one-half and the Mounts the other half. This in fact occurred and the fence was built by the parties. Warden McKnight left the Vienna Branch on September **15, 1965**. His successor, Warden Macieiski, refused in the years of **1965** and **1966** to maintain half of the division fence between the Respondent's land and the land of the Claimants, although often requested by the Claimants to do so and so notified by letters admitted into evidence.

Claimant W. R. Mount claims a loss of **22** head of missing cattle attributable to the State's failure to repair its portion of the fence. Mount had written a letter to Warden Macieiski dated March **14, 1967**, advising him that on April **1, 1967**, Mount would begin pasturing his cattle on the land bordering the prison property and requested that the Respondent repair the fence. The Warden did not cause the repairs to the fence, and Claimant did thereafter pasture his cattle on the subject land.

Warden Maiceiski wrote a letter to Mount dated April **25, 1967**, wherein he told him that he had nine

head of cattle. Mount went to the Warden but was told to return Monday, three days later. Mount waited at least 20 days before returning and, at that time, the Warden said someone had cut the fence and turned the cattle out. Mount and the Warden had a verbal confrontation, but nothing concerning the cattle came of it.

Part of Claimants' agreement with Warden McKnight concerned the maintenance of a water gate which was on the Respondent's side of Maxe Creek and which Respondent had constructed. Pursuant to this agreement, the Respondent had the duty to clear debris therefrom so as to prevent spillage and possible flooding. This agreement was honored under the administration of Warden McKnight, but not under that of Warden Macieiski, when logs and debris were allowed to accumulate.' As a result, in 1967 heavy rain downfall flowing through Maxe Creek overflowed onto Claimants' land causing a flood condition and destroying 52 acres of corn, 70 acres of pasture, and 37 acres of hay crop.

We will first consider the matter of the lost cattle. Claimants contend that with respect to the fence, Respondent breached its statutory duty to maintain a lawful fence, Ill.Rev.Stat., Ch. 54, §2, and further breached its contract between Claimants and Warden McKnight. Further, with respect to the nine head of cattle which were on Respondent's property, Claimants contend that there was a bailment relationship between the parties which required Respondent to exercise ordinary care for the protection of the cattle which care Respondent failed to provide.

In our view, Claimants' argument in connection with the State's failure to maintain the fence must fail both on statutory and on common law grounds. Ill.Rev.Stat., Ch. 54, §2, et. seq., provides for the rights of a landowner if his neighbor fails to maintain a fence.

Specifically, the injured party may construct the fence which his neighbor has failed to erect and then proceed at law for the cost and expense of so doing. Even absent the statute, the common law would require that the injured party mitigate his damage caused either by a statutory or a contractual breach by doing the work himself, rather than aggravate the damage by turning out his cattle into a pasture which was unfenced. See *Dexter us. Heochney*, 47 Ill.App. 205; *Fox us. Fearneybrough*, 85 Ill.App.2d 371.

We likewise reject Claimants' bailment argument in support of their attempt to recover for the nine head of cattle which may have wandered onto Respondent's land.

Firstly, to create a bailment there must be either an express or implicit agreement to create the relationship. There was no such agreement made here nor can the law imply such an understanding. Claimants are in effect contending that a trespasser is entitled to the status of an invitee. This is not the law. A trespasser is entitled only to be protected from intentional harm and not from ordinary negligence. Here the cattle (if they were, in fact, the cattle of Claimants, a fact not proven) were entitled to protection against intentional and not negligent injury. In any event, Claimants certainly did not act reasonably either to identify or to protect their own property. After being properly advised, Claimants allowed over 20 days to elapse before attempting to reclaim their property. In the interim period, the cattle were lost and not through any deliberate act of the Respondent.

We will next consider Claimants' claim for damage to their crops and land occasioned by Respondent's failure to maintain the water gate.

Respondent takes the position that the Claimants should have kept the water gate in repair themselves, and that Respondent's only duty was not to actively invade the property rights of the Claimants, citing *Laney u. Jasper*, 39 Ill. 46; *Mello u. Lepisto*, 77 Ill.App.2d 399. Further, argues Respondent, it is the Claimants' duty to go upon the servient land to keep the water gate in repair, citing *Wessels u. Colebank*, 174 Ill. 618; *Savoie v. Town of Bourbonnais*, 339 Ill.App. 551.

We find Respondent's arguments in this regard to be without merit and the cases cited readily distinguishable for two reasons. First, here there was an agreement by the Respondent to keep the water gate clear, which agreement it violated. Second, here the water condition was not natural but resulted from a condition on the land created by Respondent which changed the natural flow.

In our opinion, Respondent should have foreseen the damage to Claimants caused by the change in the flow of the creek, and its failure to act to prevent the overflow, by keeping the water gate free from debris, was negligence proximately causing the damage to land and crops. *Kroencke u. State*, 22 Ill.Ct.Cl. 193; *Doerr u. State*, 22 Ill.Ct.Cl. 314.

The Claimants introduced evidence as to the monetary extent of damage to the crops and lands. This was not challenged by the Respondent. Therefore, the Claimants are entitled to the amount proved for the losses of the corn crop, hay crop, and loss of pasture for the years of 1965 and 1966.

Claimants are accordingly awarded the sum of Twelve Thousand Two Hundred Fifty Dollars (\$12,250.00).

(No. 5518—Claim denied.)

W. R. MOUNT, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed June 13, 1977.

HARRIS, HOLBROOK & LAMBERT, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the state was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—contributory negligence. Where Claimant's employees were handling cattle prior to injury, and did not observe injury nor complain of injury as it occurred, contributory negligence took place.

SPIVACK, J.

Claimant seeks to recover from the State the value of seven yearling cattle and one cow which were killed as a result of the alleged negligence of a veterinarian who was employed by the Illinois Department of Agriculture.

A full hearing was conducted before Commissioner Robert F. Godfrey, who heard the testimony of several witnesses, received evidence and the briefs and arguments of Counsel. The Commissioner has duly filed his report which, together with the transcript, exhibits and briefs, is now before us. A brief summary of the facts so determined follows.

Claimant is a farmer on the Vienna Route in Johnson County. In February, 1968, he owned approximately 70 head of Black Angus cattle, including eleven yearlings which were required by State law to be tested for brucellosis. Near the end of January or the beginning of February, 1968, he was informed by Floyd Ford on behalf of the Department of Agriculture, a depart-

ment of the Respondent, that he would have to gather up his cattle to be tested for brucellosis by agents of the Respondent. Doctor William Prusaczyk, a veterinarian employed by the Respondent in the Department of Agriculture, met with the Claimant and discussed the exact date for the testing of the cattle. Shortly thereafter, on the date agreed, Doctor Prusaczyk and Mr. Ford appeared at the Claimant's farm to commence the testing for brucellosis. The Claimant's headgate, located in his barn, was used to conduct this testing of the cattle. The use of this headgate required the corraling of the cattle in one of two lots adjacent to the barn. The cattle were corraled in a feed lot which was sloped at one end, allowing mud and slush to collect at the bottom of the slope. On that particular morning, the feed lot was in a particularly muddy condition due to the winter weather and a heavy rain that had fallen the night previous to the testing.

Doctor Prusaczyk and Mr. Ford arrived at approximately eight o'clock that morning and set up their testing equipment at the headgate within the barn. When they were ready to begin, Dr. Prusaczyk told the Claimant to begin bringing his cattle into the headgate. As only one animal could be tested at a time the remainder of the cattle, while awaiting testing, caused the muddy, slushy condition of the feed lot to worsen. The mud and slush at the bottom of the slope became approximately 10 to 20 inches deep.

Dr. Prusaczyk, Mr. Ford, Robert Mount and the Claimant were inside the barn. Several of Claimant's agents and/or employees were outside herding and driving the cattle. Dr. Prusaczyk and Mr. Ford were conducting the brucellosis test. Robert Mount was operating the headgate chute. After approximately 15 to 20 cattle had been tested, it was noticed that they were

becoming extremely muddy, and Dr. Prusaczyk suggested to Claimant that the calves be separated. Claimant refused to do this. After testing approximately two-thirds of the cattle, seven head and one cow were discovered dead in the mud and slush of the feed lot having been trampled in the mud and suffocated.

In order to recover, the following elements must be proven by the Claimant by a preponderance of the evidence: (i) that he was not contributorily negligent, (ii) that the State of Illinois was negligent, (iii) that the negligence of the State was the proximate cause of the occurrence, and (iv) that damages naturally flowed therefrom.

It is our opinion that Claimant has not sustained his burden of proof with respect to either of the first two requirements.

The evidence clearly shows that Claimant's agents and/or employees were actually handling the cattle prior to being driven into the barn. Why they did not observe the animals being trampled is not explained, nor is the fact that the cattle apparently could have been corraled in another area which was not so muddy. Finally, nowhere does it appear that Claimant who was aware of the adverse conditions requested Respondent's agents to call a halt to the testing. The sum total of the foregoing is tantamount to contributory negligence on the part of the Claimant.

Insofar as Respondent's negligence is concerned, Claimant's sole contention, that "Dr. Prusaczyk knew of the hazardous condition and should have taken steps to avoid injury to the cattle," is wholly unsupported by the evidence. To the contrary, Dr. Prusaczyk did not know the condition of the corral, never having examined it, and the actual testing was conducted inside the barn.

When he suspected the danger by the muddied appearance of the cattle, he suggested a separation of the smaller ones, but his suggestion was refused by the Claimant.

For the foregoing reasons, the claim is denied.

(No. 5541—Claimant awarded \$25,000.00.)

RICHARD KOLSKI, Claimant, **vs. STATE OF ILLINOIS**,
Respondent.

Opinion filed September 13, 1976.

LOUIS G. DAVIDSON & ASSOCIATES, LTD., Attorneys
for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S.
ARKEMA, JR., Assistant Attorney General, for Respon-
dent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—evidence. Where evidence indicated that an accident had damaged a guard rail and created a protruding, sharp edge thereon, that the State knew of the condition for an unreasonable length of time without correcting same, and that Claimant was unaware of said condition when driving his motorcycle against the protruding rail, recovery will be allowed.

PERLIN, C. J.

Claimant, Richard Kolski, seeks to recover damages for the loss of his right leg which was amputated following an accident which occurred on September 20, 1967, when the motorcycle he was riding on Illinois State Route 22 near Lake Zurich, Illinois, left the highway on a curve and struck a guardrail. The guardrail had been damaged in an accident on August 12, 1967, which left the leading edge of the guardrail in a sharp, jagged condition. Claimant contends that his right leg struck

the jagged edge of the rail, causing the injury which resulted in the amputation of the leg above the knee.

The amended complaint upon which this case was heard alleged three theories of recovery. In Count One Claimant asserts that the State was negligent in allowing the guardrail to remain in a jagged and defective condition, that the negligence of the State was the proximate cause of his injury, and that he was free of contributory negligence. In Count Two Claimant alleges that the State was guilty of wanton and willful misconduct in failing to repair the guardrail, that the wanton and willful misconduct of the State proximately caused his injury and that he was free of contributory wanton and willful misconduct. In Count Three Claimant asserts a theory of strict tort liability, alleging that the State is strictly liable to Claimant for the loss of his right leg as a result of the dangerous and defective condition of the guardrail. However, during the course of oral argument, Claimant's attorney advised the Court that Claimant was abandoning his strict liability claim.

Route 22 runs in a generally easterly and westerly direction, but curves to the north as it follows the southwest shoreline of Lake Zurich. The guardrail in question borders Route 22 on that curve. In its original, undamaged condition it was 75 feet long and was placed back about three and one-half feet from the edge of the road. The shoulder of the road was covered with gravel. The guardrail was composed of panels about 12 and one-half feet long which were bolted together and stood two and one-half to three feet above the ground. The top and bottom of the rail was rounded, and there was no sharp or protruding edges to the guardrail as it was originally installed.

James Zipp, the Chief of the Lake Zurich Police Department, and several other witnesses called on be-

half of Claimant, testified that on August **12, 1967**, a car struck the west end of the guardrail, shearing off a section and bending the guardrail back from the highway. The accident left the west edge of the guardrail with a sharp, protruding edge, which was clearly shown by numerous photographs which were introduced into evidence.

Chief Zipp stated that between the accident on August **12, 1967**, and the accident of September **20, 1967**, the guardrail was not repaired. Zipp traveled past the guardrail several times daily during the course of his duties and would have noticed any repairs to the guardrail which was clearly visible from the road.

The accident involving Claimant occurred at approximately **12:30 a.m.** on September **20, 1967**. It had rained the previous evening, and the pavement was damp. Claimant was **21** years old at the time of the accident and was coming from a bowling alley located on Route **22** about a quarter to one-half mile from the accident site. Claimant lived nearby and had often traveled the route by car and motorcycle.

As Claimant proceeded from the bowling alley on his motorcycle, he was followed by a car driven by one Michael Kelley, a friend with whom he had spent the evening. Claimant and Kelley had had two bottles of beer in the bowling alley and were going into Lake Zurich when the accident occurred. Kelley testified that he was about **50** yards behind Claimant and observed that the headlight and taillight on his motorcycle were operating. He estimated that Claimant was traveling about **30** miles per hour, which was the posted speed limit on Route **22**. Kelley said that he saw Claimant traveling in a straight path on the right side of the road when he suddenly saw sparks coming from the motorcycle as it reached the western edge of the guardrail. He

saw the motorcycle fly into the air, come down and skid along the road.

Chief Zipp was called to the scene immediately and found tire tracks on the shoulder of the road for a distance of 155 feet from where the motorcycle left the pavement near the west end of the guardrail. Zipp examined the guardrail and found blood on the leading, west edge, and traces of blood further along the guardrail.

Claimant was found in an embankment behind the guardrail. Zipp said that when he found Claimant, Claimant's leg was "just hanging on by threads." Claimant was in shock and received emergency medical treatment at the scene. He was taken to Condell Memorial Hospital where he was treated by Dr. Edwin L. Mauer, an orthopedic surgeon. Dr. Mauer testified that he found Claimant in a state of shock and with an "almost complete amputation of the lower end of the thigh just above the knee."

Dr. Mauer determined that there was no chance of saving the leg and performed an amputation. Dr. Mauer described in detail the treatment which he rendered Claimant, and Claimant's subsequent rehabilitation.

In answer to a hypothetical question propounded by Claimant's attorney, Dr. Mauer stated that in his opinion, to a reasonable degree of medical certainty, the amputation of Claimant's leg was caused by it coming into contact with the jagged edge of the guardrail.

Donald Fenner, who owned and operated a service station in Lake Zurich, examined the accident site on the morning following the accident. He said that he found an accumulation of gravel on the road.

Claimant testified that he had acquired the motor-

cycle involved in the accident in May or June, **1967**. He said that he had driven past the accident site many times on the motorcycle and had always negotiated the curve at **30** miles per hour with no difficulty.

He stated that on the night of the accident he had slowed to **30** miles per hour as he approached the curve and had his motorcycle under control. There was no traffic ahead of him or coming towards him from the other direction. There was nothing to obstruct his vision, and he said that he could see both the road and the guardrail clearly. He stated that the last thing he remembered was entering the curve; he did not recall having gone off the road and had no explanation of having done so.

Claimant was hospitalized for four weeks following the accident. He testified in detail as to his hospital stay, and the "phantom pains" which he experienced following the amputation of his leg. During his high school years Claimant had been active on several athletic teams. After the amputation he was fitted with a prosthesis and attempted to resume some of his former athletic activities.

Louis Lesniak, a civil engineer employed by the Illinois Division of Highways, was called by Claimant as an adverse witness. Lesniak was employed as a field maintenance engineer in September, **1967**. His offices were in Grays Lake, Illinois, approximately **15** miles from Lake Zurich. His office had a sub-storage station located in Lake Zurich, approximately one-half mile from the accident site. The storage station was frequented by State employees picking up equipment, and Lesniak said that these employees would necessarily pass the damaged guardrail in traveling between his offices and the storage station. These employees were instructed to observe the conditions of roads during the

course of their work and to note conditions in need of repair.

Lesniak further testified that one week notice should have been ample time in which to repair the guardrail, and that it was an unusual departure from standard practice to permit the damaged guardrail to remain in disrepair from August 12 to September 20. He said that he knew of no reason which would have justified the delay in the repair of the guardrail.

We first consider whether, on these facts, Claimant has established a cause of action for negligence. This Court has held on numerous occasions that the State of Illinois is not an insurer of every accident which occurs upon its public highways. *Link v. State*, 24 Ill.Ct.Cl. 69; *Palecki v. State*, 27 Ill.Ct.Cl. 108. The State of Illinois is charged only with maintaining its highways in a reasonably safe condition and with using reasonable diligence in doing so. *Garrett, et al. v. State*, 22 Ill.Ct.Cl. 343. We have also held that the State's duty of due and reasonable care extends to maintenance of the shoulders of roadways for the uses for which they are reasonably intended. *Lee v. State*, 22 Ill.Ct.Cl. 291; *Welch v. State*, 25 Ill.Ct.Cl. 270.

Thus, in order for Claimant to recover on his negligence claim, he bears the burden of proving by a preponderance of the evidence that the State breached its duty to use reasonable care in maintaining the guardrail along Route 22, that the negligence of the State was a proximate cause of his injury, and that he was free of contributory negligence.

The record does establish that the State did not use reasonable care in maintaining the guardrail alongside Route 22. The guardrail had been damaged in an automobile accident on August 12, 1967, yet the guardrail

had not been repaired by September **20, 1967**, when Claimant's accident occurred. Photographs of the guardrail which were introduced into evidence show that the edge of the guardrail was in a dangerous condition on September **20**, and the testimony of Chief Zipp establishes that the condition had existed since the August **12** accident.

The guardrail was clearly visible from Route **22**, and a State Highway Department storage shed which was frequented by State employees was located only a few hundred feet from the damaged guardrail. Even if the State did not have actual notice of the dangerous condition, the fact that the condition had existed for over one month is sufficient to charge the State with constructive notice of the condition. See *Candle v. State*, **19 Ill.Ct.Cl. 35**; *Pyle v. State*, No. **5343** (filed November **19, 1973**). Louis Lesniak, a State maintenance engineer, testified that the guardrail should have been repaired within one week of its having been damaged, and that it was an unusual departure from standard practice for the guardrail to have remained in disrepair for as long as one month.

For these reasons, we find that the State did not use reasonable care in maintaining the guardrail.

We further find that the failure of the State to properly maintain the guardrail was a proximate cause of Claimant's injury. Respondent contends that Claimant's leg did not strike the jagged edge of the guardrail, but rather that the leg was crushed against the undamaged length of the rail. However, we think that the preponderance of the evidence is that Claimant's leg did strike the jagged edge of the guardrail causing the loss of Claimant's leg.

Chief Zipp, who was at the accident site almost immediately, stated that he examined the edge of the rail and found Claimant's blood on the jagged end. He also found tire tracks from a motorcycle which led to the sharp edge.

Most significantly, Dr. Mauer testified that he observed an "almost complete traumatic amputation" of Claimant's leg when he saw Claimant in the hospital emergency room. He added that such an injury was most likely caused by striking a sharp object, such as the damaged end of the guardrail. Dr. Mauer said that it was improbable that such an injury was caused by the leg being crushed against the length of the guardrail, as he did not observe any bruises or abrasions around the amputation site.

We therefore conclude that Claimant's leg struck the damaged edge of the guardrail, and that the negligence of the State, in permitting the guardrail to remain in a dangerous condition for over one month, was a proximate cause of the loss of Claimant's leg.

Respondent strongly contends that Claimant has failed to prove his freedom from contributory negligence. In resolving this issue, we are first faced with the fact that Claimant has offered no explanation for his motorcycle having left the highway. Claimant himself has no recollection of the incident after he entered the curve on Route 22. However, Michael Kelley, who was following Claimant in an automobile and who was an eyewitness to the accident, testified that Claimant was proceeding at a lawful speed and in a straight line when his motorcycle suddenly left the road and struck the guardrail. This testimony does tend to establish that Claimant was operating the motorcycle in a lawful and proper manner at the time of the accident. We also note

the testimony of Donald Fenner who examined the accident site and found an accumulation of gravel on the highway.

Based on the foregoing testimony we conclude that Claimant has by a preponderance of the evidence established his freedom from contributory negligence.

It is difficult for this Court to understand why Chief Zipp apparently failed to notify appropriate authorities of the dangerous condition of the guardrail in view of the fact that he traveled past the guardrail several times daily. It is also difficult to understand the failure of State employees to report the damaged condition of the guardrail, as indicated by the testimony of Field Maintenance Engineer Louis Lesniak. The Court is constrained to express concern at such an apparent lack of cooperation and due care by state and municipal personnel. We believe that the safety of our citizens requires that a greater degree of care be exercised than exhibited in this instance by the local Chief of Police and the State's employees.

We feel obligated on the basis of the facts contained in this record to enter an award on behalf of Claimant.

Claimant was **21** years old at the time of the accident and has a life expectancy of over **40** years. He has incurred substantial medical expenses as a result of the loss of his leg. Claimant is hereby awarded the sum of Twenty-Five Thousand Dollars (\$25,000).

(No. 5550—Claim denied.)

IRIS A. ALSUP, ET AL., Claimant, *vs.* **STATE OF ILLINOIS,**
Respondent.

Opinion filed December 3, 1976.

WEBBER, BALBACH, THIES and FOLLMER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER and DOUGLAS G. OLSON, Assistant Attorneys General, for Respondent.

NEGLIGENCE—burden *ofproof*. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

EVIDENCE—Same. Where evidence indicated that Claimant was traveling 55-65 miles per hour when he attempted to return after leaving a road, and where evidence indicated that the State had used reasonable care in inspecting and maintaining a highway, no recovery is allowed.

BURKS, J.

Claimants seek recovery for Claimants' intestates **Fred Glover, his wife, Lula Mae Glover, and their children**, Danny Lee Glover and Dennis James Glover. Also, recovery is sought for injuries sustained by Florence Ann Elam and Jerry Lynn Glover.

The evidence shows that at twilight on August 10, 1966, Fred Glover and his family were driving south on Interstate 55 near the Williams Road Overpass in Will County, Illinois. Fred Glover, his wife, Lula Mae Glover, and their children, Danny Lee, Dennis James, Florence and Jerry, were on a vacation trip to Arkansas and had left the family home in Romeoville, Illinois earlier in the day.

As the Glover vehicle approached the Williams Road Overpass on Interstate 55, the vehicle went out of control and collided with a bridge abutment. Serious injuries were sustained by Florence Ann Glover and her brother, Jerry Lynn Glover; the remaining members of the Glover family were killed. Claimants charge that the State was negligent in designing and constructing the shoulder surfaces adjoining the highway, designing

the bridge abutment without a guardrail, failing to keep the highway in a reasonably safe condition, failing to warn of a hidden curve, and failing to design and maintain the highway and shoulders in a manner adequate for anticipated usage.

The evidence shows that the Glover vehicle was being operated on the left-hand side of the southbound lanes as it approached the Williams Road Overpass. After having passed several vehicles, it remained on the left side of the southbound lanes and drifted onto the asphalt shoulder which lies adjacent to and east of the east edge of the southbound lanes. As the Glover automobile started to pull back onto the traveled portion of the southbound lanes, the vehicle appeared to grab the edge of the paved portion of the road at the left rear wheel and go out of control. The vehicle veered from the right to the left two or three times and skidded into a bridge abutment at the Williams Road Overpass.

The two surviving Glover children had no recollection of the facts of the accident, apparently as a result of traumatically induced amnesia.

David Swank, a truck driver from Williamsville, Missouri, who was driving south on Interstate 55 at the scene of the accident, was an eyewitness. Swank observed the Glover vehicle as it passed a truck behind his and proceeded to pass his truck in the left-hand, southbound lane. Swank estimated Glover's speed to be 55-65 miles per hour. The Glover vehicle remained in the left-hand southbound lane after having passed Swank's vehicle and slowly drifted to the left onto the asphalt shoulder, so that the left two wheels of the Glover vehicle were off of the main traveled portion of the southbound lanes. Swank testified that as the Glover vehicle started to pull back to the right and onto the traveled portion of the southbound lanes, the left rear

wheel of the Glover car grabbed the edge of the paved portion of the highway causing the car to lurch to the right and begin veering from right to left. Swank testified that after the left tires of the Glover vehicle drifted onto the shoulder, the car did not decrease its speed prior to attempting to return to the main traveled portion of the southbound lanes. Swank was shown to be an experienced truck driver.

The bulk of Claimants' evidence concerned the question of the presence of a four to six inch drop-off between the asphalt shoulder and the concrete portion of the highway. It was maintained by Claimants that this drop-off caused the Glover vehicle to go out of control and proximately resulted in the deaths and injuries for which damages are claimed.

The day after the accident several members of the Claimants' family went to the scene of the accident. Herbert Blalock testified that the shoulders of the highway at the accident scene were washed out and that there was a drop-off. Blalock testified that the drop-off was from four to six inches.

Charles Inboden testified there was a deep drop-off.

State Troopers Hershel Goken and Robert Smith were at the scene of the accident and testified that they observed no unusual conditions along the shoulders of the highway.

John Watson, a wrecker truck driver who was present at the scene, testified that he was familiar with the condition of the highway at the scene of the accident and related that the shoulders were in good condition. Watson testified that there was a separation of the blacktop and the concrete highway at the shoulder of approximately one inch to one and one-half inches.

John Picciolo, a maintenance worker for the State of Illinois whose responsibilities covered the area of 1-55 near the Williams Road Overpass, testified that he inspected that section of 1-55 every day and sometimes twice a day. His duties included repairing the road and the shoulders. Picciolo testified that at the area of the accident, the drop-off from the surface of the highway to the shoulder could have been three to four inches.

Fred Mason, a traffic engineer for the State of Illinois during August, **1966**, viewed the accident scene three days after the event. Mason's report revealed that the median shoulder at the scene of the accident was one inch or two inches low along the pavement edge.

Steve Kakavas, a maintenance field engineer for the State of Illinois, inspected the highway prior to the accident in question at least once a week. He recalled that the inside shoulder of southbound 1-55 at the Williams Road Overpass was always in good condition. He testified that the median shoulders had very little traffic on them.

Claimants rely principally on their allegation that the State had failed to properly maintain the shoulder of the road at the scene of the accident. There was no sufficient proof adduced tending to substantiate Claimants' charges relative to the State's design of the shoulder or highway or the design of the bridge abutment.

In order to recover, the following elements must be proven:

- (1) That the State of Illinois was negligent,
- (2) That such negligence was the proximate cause of the deaths and injuries alleged in the Complaint, and,
- (3) That the occupants of the car were not contributorily negligent.

It is Claimants' main contention that the accident was caused by the condition of the road, in that the shoulder was several inches lower than the road.

From the testimony of the eyewitness in this case, it appears that Fred Glover was contributorily negligent, and that his own action proximately caused the accident resulting in his death. At the time the Glover vehicle drifted onto the median shoulder, Glover was apparently still in control of his car. Then, as the Glover vehicle returned to the traveled portion of the road, it went out of control, resulting in the accident. The speed of the Glover vehicle was not reduced prior to returning all four wheels to the main traveled portion of the highway.

Section Fifty-four of the Uniform Act Regulating Traffic on Highways (Ill.Rev.Stat., Ch. 951/2, 3151) provided that "upon all roadways of sufficient width, a vehicle shall be driven upon the right half of the roadway." Exceptions to this rule do not apply in the incident case. "**Roadway,**" as defined by the Illinois Vehicle Code, does not include the shoulders thereof. In the case of *Sommer v. State of Illinois*, 21 Ill.Ct.Cl. 259, this Court stated:

We do not feel respondent has a duty to maintain the shoulders of its highways in a manner that would insure the safety of vehicles turning off onto the shoulder for whatever their purpose might be, and then attempting to return to the roadway, while traveling at the same speed.

In the case of *Lee v. State of Illinois*, 25 Ill.Ct.Cl. 29, 34, this Court stated:

While the State must use reasonable care in maintaining the shoulder of a highway, there is no basis to hold that a difference of three or four inches in the levels of the road and shoulder constitutes a dangerous condition per se.

In the opinion of this Court, Claimant has failed to sustain the burden of proof that Fred Glover was free from contributory negligence.

The further question arises as to the claims on behalf of and as a result of the injuries and deaths sustained by other occupants of the Glover vehicle.

The record in this cause does not support the contention of Claimants that a defective condition existed on the highway and shoulder which was the proximate cause of the accident resulting in Claimants' injuries. As set forth above, there was ample evidence to compel the conclusion that the State used reasonable care in the inspection and maintenance of Interstate 55 at and near the scene of this accident. Steve Kakavas, the highway maintenance field engineer, testified that the median shoulders of Interstate Route 55 were to provide an area where, if a car ran off the road, it "could decelerate prior to getting back on the pavement."

Charles Schmidt, a state highway engineer who investigated the area of the accident, testified that the median shoulder was not built for operating at normal highway speed.

The eyewitness truck driver, David Swank, testified without contradiction that the Glover automobile was still traveling about 55-65 miles per hour when it attempted to return to the paved portion of Interstate 55.

In the opinion of this Court, Claimants have failed to sustain their burden of proof that the State did not use reasonable care in the maintenance of the shoulders of the highway at the scene of this accident. The claims of Iris A. Alsop as Administratrix, and the claims of Florence Elam and Jerry Glover, are hereby denied.

(No. 5627—Claim denied.)

JEFFREY A. LIND, Claimant *us.* **STATE OF ILLINOIS, and
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondents.**

Opinion filed April 18, 1977.

MORTON S. GOLDFINE and JOHN C. NEWELL, JR.,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that the Claimant was in the exercise of due care for his own safety.

SAME—evidence. Where evidence indicated barricades along highway were all lighted and had been placed upright shortly before accident occurred when Claimant drove over fallen barricade, no recovery could be allowed.

SPIVACK, J.

Claimant, Jeffrey A. Lind, by his mother and next friend, seeks to recover from the State of Illinois a sum of \$25,000.00 for personal injuries allegedly sustained as a result of Respondent's negligence, whereby Claimant was severely and permanently injured.

The undisputed facts are as follows: Jeffrey Lind, on August 3, 1966, was seventeen years of age and a full-time employee in Havana, Illinois; on the day of the accident, he had been working in Vermont, Illinois. That morning he had ridden to work as a passenger on the motorcycle of Roger Lynn Mason. As they rode to work in a westerly direction on Route 136, Claimant noticed barricades on the south side of the road. Lind and Mason left work about 5:00 p.m. and stopped at Ipave, Mason's cousin's home, visiting there for about three hours. They did not eat there, although Jack Russell drank "less than" a can of beer and Lind and Mason drank some "pop." They were not in a hurry to return home.

After leaving Ipave on the way home, Lind again rode as a passenger on Mason's motorcycle. They were

following Jack Russell, who was also operating a motorcycle, both machines proceeding in an easterly direction on Route **136**. Although there is some inconsistency regarding the actual time of the occurrence, all three agreed that the night was clear and dry and was "pitch black."

Route **136** had been torn up for repair work. Around and along the construction site were barricades. Prior to reaching the construction, Lind testified that he saw a "Construction Ahead" sign, then another sign which read "One Lane Road Ahead." Both motorcycles were traveling at a speed of **40** to **50** miles per hour and their headlights were on. The two motorcycles successfully avoided many barricades by riding in the left lane of the highway. They swung back to the right side of the road as they approached a hill or rise to avoid any chance of collision with an approaching car, although there was no oncoming traffic. At the top of the hill was a barricade with three working lights. They went back to the right side of the road because they thought that the construction had ended. However, a short distance from the barricade at the top of the hill was another barricade which was apparently lying on its side. Russell avoided this one, but Mason's motorcycle hit it. This collision badly broke Lind's leg. Although it was promptly set and is now healed, Lind was totally incapacitated for a period of eight months and still complains of intermittent pains, a slight limp, and loss of normal use.

Lind, due to his injury, was not able to take notice of the surroundings after the accident. His witnesses, Mason and Russell, testified as to the appearance of the barricades. They stated that the barricade hit by Mason was down before he approached it. They were not quite sure whether the barricade hit was the last of the

barricades but stated that there were two or three barricades down and not all equipped with blinking lights. The ones that had lights were, by Mason's and Russell's testimony, not working. Russell stated that as Mason went to get aid for Lind, Russell and an unknown state trooper set the barricades upright and worked to get the flashes working. This state trooper was not brought in as a witness.

A witness for the Respondent, Fay Shawgo, an employee of the State, testified that he was called from home on August 3, 1966, to get some barricades righted and operational on Route 136. He went out to the construction site at dusk and, although he did not know the exact time, he stated that one could still drive without lights. After he set up the fallen barricades, he returned home using his car lights. He stated that upon his arrival at the scene he found that, although down, the barricades' blinkers were still all working. He was careful to check that. A report from the Division of Highways was filed July 23, 1970, stating that all the barricades were equipped with flasher lights.

Lind, the Claimant in this action, alleges that the State was negligent in the maintenance of the barricades at the construction site. The force of the Claimant's argument is that the barricades were not properly lit and/or maintained so as to inform motorists of their danger and that this failure was a breach of duty by the State and the proximate cause of Claimant's injury.

There is no substantial disagreement between the parties as to the applicable law; the dispute arises as to the application of the law to the facts presented.

The mere happening of an accident does not of itself raise any presumption of negligence on the part of

defendant. *Brown us. Beyles*, 27 Ill.App.2d, 114, 169 N.E.2d 273, (1960). This is not a strict liability action.

The State is not an insurer against accidents on its highways. *Bouey, et al. us. State*, 22 Ill.Ct.Cl. 95, 108, (1955), "[The State] is required only to keep them in a reasonably safe condition for the purpose to which the portion in question is devoted, and the placing of signs warning of the conditions to be met, fulfills the obligation of the State to the users of the highway."

It is the obligation of the Claimant to prove by a preponderance of the evidence that the Respondent had actual or constructive knowledge of the defect which is alleged to have caused the injury. *Manus us. State of Illinois*, 22 Ill.Ct.Cl. 335, 339.

Claimant argues that not only was constructive notice of the allegedly dangerous conditions imposed upon the Respondent by the decision in *Whitehouse Trucking Co. us. State of Illinois*, 25 Ill.Ct.Cl. 126, but further that *Whitehouse* requires the State to maintain the warning devices up to the precise moment of the accident. He relies on the language at page 136: "adequate warning devices in place and in working order *at the time of the accident*" (sic). However, at 135 the decision states that "(T)he court is also of the opinion that, once the warning devices are in place, it is the duty of the State to take *reasonable* precaution to see that such warning devices remain in place and in working order." (Emphasis added.) We believe the key word in this decision is "reasonable."

"Reasonable" is, of course, a term of art and cannot be held to a hard and fast definition. Black's Law Dictionary (4th Ed. 1951 p. 1431) defines reasonable as "just; proper; ordinary or usual. Fit and appropriate to the end in view."

Whitehouse held that it was not reasonable, in view of the stormy weather present there, for the foreman to leave the warning signals alone all night with no one to check them. Likewise, in another case advanced by the Claimant, *Bouey vs. State*, 22 Ill.Ct.Cl. 95, it was not reasonable for the State to maintain only one sign which did not adequately warn of the hazards ahead in view of the knowledge the State had of the dangerous conditions existing.

The facts of the case at bar are substantially different from *Whitehouse* and *Bouey*. Here all barricades had flashers and were righted and checked by Mr. Shawgo immediately before the occurrence. The weather was clear and dry. There was no reason for anyone to know that the barricades would not be in order shortly after they had been checked. It is clear that the State took reasonable precautions to see that the warning devices were in place and in working order.

In view of our finding that Claimant has failed to prove by a preponderance of the evidence that the State breached its duty of care to Claimant, it is not necessary to consider whether on the facts the Claimant: (i) sustained his burden of proof that he was not contributorily negligent, (ii) whether the driver was negligent, (iii) whether the driver's negligence, if any, was imputable to Claimant, and (iv) whether the negligence of the State, had it been proved, was the proximate cause of the accident or whether the negligence of the driver, if any, was an intervening cause.

The claim is hereby denied.

(No. 5641—Claimant awarded \$15,000.)

DAVID MCGEE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 10, 1977.

JOHN S. ADLER of ASHER, GREENFIELD, GUBBINS & SEGALL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

NEGLIGENCE—*duty to inmates.* The State cannot escape its duty to an individual merely because he or she is an inmate of an institution. The State must meet the same standards of care and safety required of private industry.

SAME—contributory negligence. Where refusal to do an act would subject a Claimant to disciplinary action, contributory negligence is not available as a defense so long as the negligence of the State was the proximate cause of the accident.

HOLDERMAN, J.

This matter comes before the Court as a result of an accident sustained by Claimant, David McGee, while an inmate of the Illinois State Penitentiary of Joliet, Illinois.

On May 12, 1967, Claimant's superiors in said penitentiary assigned him to work in the shoe factory and, in connection with this work, he was directed and required to operate an electrically operated shoe repair machine.

Claimant's Second Amended Complaint alleges, in part, as follows:

"3. That said shoe repair machine was an inherently dangerous instrumentality and that said Respondent knew and by the exercise of reasonable care or diligence could or should have known of the machine's dangerous propensities and that the Claimant could or might suffer injuries therefrom.

4. That the Claimant, when assigned to work with and upon said machine, had no prior technical or other knowledge of the mechanical operation of said machine or of its then mechanical condition.

5. That at the time said Claimant was directed

and required to operate said machine, the Respondent knew or by the exercise of reasonable care or diligence could or should have known that said machine was defective and in poor mechanical condition and that such defect and condition could or might cause serious bodily injury to the Claimant herein.

6. That a grinding or scouring wheel was attached to and was an integral part of said machine which was defective and inherently dangerous by virtue of the use to which it was put and the purpose for which it was designed and used. That the Respondent knew or by the exercise of reasonable care or diligence could or should have known that said grinding or scouring wheel was defective and could or might cause injury to the Claimant herein.

7. That on May 12, 1967, the Claimant was operating said machine under and in accordance with the directions of his superiors of said penitentiary as aforesaid, and while in the course of said operation, parts of said machine, such as the locking device, broke or came loose and fell apart and the grinding or scouring wheel broke, fractured, and disintegrated, causing certain parts or fragments of said machine to strike the Claimant about his head, face, and eyes, as a result of which Claimant suffered serious injuries and the permanent loss of vision in his right eye.

8. That the Respondent committed one or more of the following wrongful, careless or negligent acts or omissions, to-wit:

- a. It failed to properly instruct the Claimant as to the mechanical operation of said machine;
- b. It failed to inspect and maintain said machine;
- c. It failed to repair or replace old, worn-out or defective parts of said machine;

d. It failed to provide the Claimant with a safe place wherein to perform his work;

e. It failed to provide the Claimant with proper safety headdress, clothing or other guards or safety devices so as to avoid being injured in the event of a malfunction of said machine;

f. It failed to properly supervise said machine and the operation thereof;

g. It permitted the Claimant to operate said machine with knowledge that it was defective, worn-out, and in poor operating condition; and

h. It failed to properly warn the Claimant of the machine's dangerous propensities and the defective condition of which said machine existed prior to and at the time of said occurrence."

The facts are undisputed that Claimant was operating a grinding wheel at the speed of **3,500** revolutions per minute, and that while operating said machine, a portion of the wheel came off and struck Claimant in the right eye.

The undisputed testimony of the Claimant is that he was not supplied with either safety goggles or a face shield. There was some evidence introduced to the effect that this should be a mandatory requirement for a machine such as the one involved in this accident.

The machine in question is one in which the grinding wheels are used to sandpaper and smooth shoes. The sandpaper is attached to the wheel and has to be changed several times a day depending upon the use. One of the safety features of the machine is a movable guard. The evidence indicates that if the guard is placed in a "down" position, it adds a safety factor to the operation of said machine.

The Claimant testified that when he started to use the machine, the guard was down, and one of the prison attendants testified that the day after the accident happened, the guard was up which would allow the broken pieces of the wheel to fly in an upward manner and cause the injury.

Claimant indicates that there was a locking device that came loose which caused the accident in question.

Respondent denies liability on the grounds that the Claimant was guilty of contributory negligence in the operation of the machine, and that his contributory negligence was the proximate cause of the accident.

Claimant testified he had used this machine for a period of **60** to **90** days, that he had had very little instruction as to the use of the same, and that he was not a trained mechanic. He also testified he had never seen the manual that was issued by the company to be used by the operators of said machine. He further testified he had been given 15 to 20 minutes instruction relative to the use of this machine.

The duty required of the State in cases of this nature is well set forth in **25 Ill.Ct.Cl. 237**, where the following language is used:

The State cannot escape its duty to an individual merely because he or she is an inmate of an institution. This Court has held on numerous occasions that the State must meet the same standards of care and safety as are required of private industry.

The Court calls attention to the fact that an inmate of a State institution is an entirely different situation than an employee on the outside who can quit or refuse to work if conditions are unsafe. An inmate of a State institution, such as a State penitentiary, does not have the liberty of choice and must work under conditions that are assigned to him.

The defenses of assumption of risk and contributory negligence are often properly available to the Respondent in actions brought by a convict, but certainly not under the facts in this case. The rule is well stated in *Moore vs. State*, 21 Ill.Ct.Cl. 282, **290**:

Claimant, as a convict, was required to take orders, and carry them out. To refuse to do so would subject him to disciplinary action, and the forfeiture of his limited privileges, including prompt consideration for parole. Thus, he did not occupy a position of independence which a person outside a penitentiary occupies. His choice of action being limited, he, therefore, kept silent and did as he was ordered. In fact, he did not possess, under the circumstances in this case, the freedom of choice inherent in the doctrines of assumed risk and contributory negligence. *Burke vs. State of Illinois*, 27 Ill.Ct.Cl. 379.

This Court has previously held that the standards of the Health and Safety Act that apply to other industries also apply to the State.

It appears to this Court that if either of the two safety regulations, such as a plexi-glass safety shield on the machine or, in the absence of that, safety goggles or a face shield had been provided to Claimant, the accident would never have happened.

Before Claimant can recover, he must prove that his negligence did not contribute to the accident and that the negligence of the State was the proximate cause of the accident.

It is the opinion of this Court that the proximate cause of the injury was the failure of the State to use proper precautions in its supervision of the workers and machinery and also in its failure to provide proper safety equipment to Claimant.

The problem of determining the amount of Claimant's award is one of some difficulty. This has been discussed in other Court of Claims cases, particularly in 28 Ill.Ct.Cl. 238, where the Court stated "that compensation is incapable of exact mathematical calculation."

Considering all the facts and circumstances in this case, we conclude an award for damages to the Claimant in the amount of Fifteen Thousand Dollars (**\$15,000.00**) would be fair and reasonable.

Claimant, David McGee, is 'hereby awarded damages for his personal injuries in the total sum of Fifteen Thousand Dollars (\$15,000.00).

(No. 5700—Claim denied.)

ROMAN SANTIAGO, ET AL., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1977.

KARLIN and FLEISHER, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence ~~was~~ the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—contributory negligence. Where Claimant offers no explanation for failing to turn car away from state vehicle before accident, or for being only 25 feet from state vehicle before noticing it, he fails to prove freedom from contributory negligence.

SPIVACK, J.

The claim herein presented is one sounding in tort; specifically, that Claimants were injured and damaged in varying degrees as a proximate result of the negligence of the driver of an Emergency Patrol Vehicle ("E.P.V.") belonging to and under the control of the State of Illinois, Division of Highways.

The matter was assigned to Commissioner J. Barry Fisher who received evidence and heard arguments of counsel on June 21, 1972, July 17, 1972, and September 6, 1972. In due time, the Commissioner filed his report,

the transcripts of the testimony and argument, various exhibits and the parties' briefs and arguments with the Court, all of which are now before us.

The facts adduced by the Commissioner from the testimony of Claimant, of J. Shapiro (driver of the E.P.V.), of R. Pecaut (Illinois State Trooper called to the scene immediately following the accident), and of R. H. Swan (an independent eye witness) are in summary as follows:

On November 3, 1967, between 2:30 and 3:00 p.m. , Claimant was driving southbound on 194 C (Calumet Expressway), a six-lane highway divided by a median strip. Just south of 154th Street overpass, Claimant was in the inside lane (east), proceeding at about 45 miles per hour.

At said time and place, there were three vehicles stopped on the highway facing south. One passenger vehicle was entirely on the median strip and was stuck either in the mud or in a rut. A second vehicle, a jeep, was partly on the highway and partly on the median strip. The third vehicle, the E.P.V., was north of the other two, and partly on the highway and partly on the median.

The weather at the time was overcast or foggy, but visibility was good. The pavement was wet. The stopped vehicles were in a modest curve, however they could be seen from the north at a distance of one-half to one mile.

The emergency vehicle had flasher lights and dome lights which were on and functioning. No flares or fuses were on the highway north of the stopped vehicles. No evidence was given as to conditions of traffic on the outside lanes (west) at the time of the occurrence.

Claimant was behind one other vehicle which was between him and the E.P.V. This other unidentified

vehicle swerved to the outside (west) lane and Claimant found himself some "twenty-five feet" from the E.P.V. He was unable to swerve or stop and struck the rear of the E.P.V. with the front of his automobile. Injuries to Claimant and his wife and child who were passengers resulted from the collision.

Claimant's theory of the State's liability in this case rests upon two theories of negligence:

First, that the E.P.V. should, in the exercise of ordinary care, have pulled entirely off the highway and onto the median. In support of this contention, Claimant direct our attention to Ill.Rev.Stat., Ch. 95-1/2, §11-1301(a), which provides that no person shall leave any vehicle stopped upon a highway when it is practical to leave it stopped off the highway.

This argument fails for two reasons: first, that it would not have been practical to stop the E.P.V. entirely on the median since that would have left exposed to oncoming traffic the jeep that was partly on and partly off the highway. By being in the exact position it was, the E.P.V. successfully acted as a shield for the jeep. Secondly, Ill.Rev.Stat., Ch. 95-1/2, §411-205 (b), (c) and (d) provide that an emergency vehicle may stop irrespective of the chapter's other provisions if an appropriate visual signal is used. Clearly, the use and operation of the E.P.V.'s flasher and dome lights were appropriate visual signals.

Claimant's second theory of the State's negligence is based upon the contention that the exercise of ordinary care would require the E.P.V. to place flares or fuses behind the vehicle. We do not agree in view of the fact that the E.P.V. flashing and turning lights were visible for at least one-half mile from its stopped position. Had not these lights been visible for a reasonable distance,

then perhaps it could be persuasively argued that ordinary care would require some additional advance warning to be given to oncoming traffic.

In order for Claimant to recover, he must prove by a preponderance of the evidence that (1) Claimant was free from contributory negligence, (2) Respondent was negligent, and (3) such negligence was the proximate cause of the accident. *Wasilkowski vs. State*, (No. 4995, Aug. 6, 1973); *Weygandt vs. State*, 23 Ill.Ct.Cl. 478.

Claimant has wholly failed to prove his freedom from contributory negligence. No explanation is given for his failure to turn his car into the inside lane just prior to the collision, as did the unidentified car ahead; no explanation is given for his being "twenty-five feet" from the E.P.V. when he first observed it; no explanation is given for his being unable to stop his vehicle in time to avoid an obstruction in the highway; no explanation is given for his not seeing a large emergency vehicle with lights flashing and turning until he was within two car lengths from it. We can only speculate that Claimant must have been traveling too closely to the car ahead, too fast under the conditions of weather and traffic prevailing, and been inattentive to the conditions of traffic then existent.

Claimant, as previously discussed in this Opinion, has likewise failed to prove by a preponderance of the evidence that Respondent violated either its statutory duty or common law duty of ordinary care.

Finally, it is clear from the evidence that the proximate cause of the accident and of the injuries to all of the Claimants was the result of the negligence of the Claimant driver.

For all of the foregoing reasons, the claim of each Claimant herein is denied.

(No. 5703—Claim denied.)

WEIBOLDT STORES, INC. ET AL., Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 3, 1976.

EDWARD WARDEN and THOMAS E. GREENLAND, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., and BONNIEM G. WALT, Assistant Attorneys General, for Respondent.

CONTRACTS—breach. Where terms of agreement clearly specified that the city of Des Plaines and not the State should remove or remedy any condition unsatisfactory to Claimant, no claim will stand for failure of State to remove excavated material from Claimant's property.

BURKS, J.

This is an action for damages allegedly incurred by Claimants as a result of Respondent's alleged breach of contract for depositing on Claimants' property a large quantity of excavated material and permitting such material to remain on Claimants' property beyond the period allegedly permitted.

In approximately the middle of **1966**, negotiations were entered into between the Bureau of Right-of-way and Permits of the State of Illinois, Division of Waterways and the Chicago & Northwestern Railway in regards to the Railway's property abutting the Weller Creek in Des Plaines, Illinois, for the purpose of granting an easement to the State to facilitate the State's construction of the Weller Creek project, designed to provide flood control and drainage improvement for Des Plaines and the surrounding area. Negotiations continued until January, **1968**, at which time the Respondent sent to the Chicago & Northwestern Railway Company the project plan and specification upon which the contractors were to submit bids. These documents were accompanied by a letter dated January 12, 1968, in

which it was requested that the Railway Company reply relative to the spoil areas designated in the plans and specifications. The dirt removed by excavation of water channels is referred to as spoil. The plans and specifications designated areas on the Claimants' property upon which spoil was to be deposited. These plans and specifications were returned to the Respondent by mail without comment.

On March 11, 1968, a written agreement was entered into between the Chicago & Northwestern Railway Company, the City of Des Plaines, and the State of Illinois, setting out the respective rights and duties of the parties relevant to the Weller Creek project. No specific mention of spoil areas was contained in this written agreement.

In September of 1968, the Schless Construction Company and Respondent entered into an agreement whereby Schless agreed to construct the Weller Creek project in accordance with the State of Illinois plans and specifications.

Work on the project commenced in September, 1968, and included the excavation of large quantities of spoil that were piled on the bank of the creek on the property of the Chicago & Northwestern Railway. No areas other than those designated as such in the plans and specifications were used as spoil areas.

On October 1, 1968, a letter was sent by the Chicago & Northwestern Railway to the State of Illinois requesting that the spoil material not be disposed of on railroad property. Thereafter, on October 2, 1968, a telegram was sent by the State of Illinois to Schless Construction Company directing Schless,

to spoil excess material from that work upon the property of the Chicago & Northwestern Railway . . . in accordance with the plans and specifications as bid by your (Schless) firm.

On October **16, 1968**, the Claimant, Chicago and Northwestern Railway, agreed to convey to Claimant, Weiboldt Stores, Inc., the real estate involved in this case, with the stipulation that the spoil material would be removed at no expense to Weiboldt.

On November **4, 1968**, the Claimant, Chicago & Northwestern Railway, the City of Des Plaines, and the State of Illinois executed a rider to their March **11, 1968**, agreement whereby it was specified that the State's easement for construction would expire on August **1, 1969**.

By letter dated September **4, 1969**, the Chicago & Northwestern Railway demanded that the State remove the spoil at the State's expense from the property now held by Weiboldt Stores, Inc. In reply, by letter dated September **8, 1969**, the State proposed an alternative solution to the problem, which was not accepted by the Chicago & Northwestern Railway.

In late 1969, inasmuch as the problem remained unsolved, the Claimant, Weiboldt Stores, Inc., removed the spoil material at its own expense of approximately **\$85,000.00**

The issue before the Court is whether the State, by its agreement with the Chicago & Northwestern Railway, had a duty to remove the spoil material.

Although there was extensive and conflicting testimony heard relevant to whether any spoil was deposited after the August **1, 1969**, deadline and as to the size of the spoil piles, this Court is satisfied, from the evidence, that no substantial deposits of spoil were made after August **1, 1969**, and that the height of the spoil piles were within the limitations of the plans and specifications.

The Claimants contend that inasmuch as the contract between the parties was silent as to the plans and specifications, that these plans and specifications are not to be considered as part of the contract and that there were provisions in the contract which granted to the State only the right to enter upon and use the Claimants' property for the purpose of dredging and construction and not for the purpose of deposits of spoil material on the Claimants' property. Furthermore, Claimants contend that it was customary in the industry to remove spoil material from canal and creek projects and deposit them to a dump and site, *Boynton v. Lynn Gas Light Co.*, 124 Mass. 197 as authority.

We cannot agree with these contentions. The deposit of spoil on the property was contemplated by the parties to the agreement. The plans and specifications for the Weller Creek project were transmitted to the Claimant on January 12, 1968. Page two of the plans contains a drawing captioned "location of spoil areas." Section 30-1 of the specifications states:

All excavated materials shall be disposed of as shown on the plans, or as directed by the engineer. All excess excavation and materials, which are designated by the engineer as unsuitable for use in embankments or spoil areas, shall be disposed of by the contractor at his sole expense.

Section 50-4 of the specifications also mentions spoil areas.

It is inconceivable that a project of the magnitude of the Weller Creek project would be undertaken without approved plans and specifications. It is also inconceivable that the Chicago & Northwestern Railway would have entered into the written contract without having first approved of the plans and specifications. We view the silence of the Chicago & Northwestern Railway as an approval of the plans and specifications which formed the basis of the written contract entered into little more

than a month later. Having been contemplated by the parties, and having been approved by the parties, the plans and specifications are considered to be part of the contract even though they are not referred to in the body of the contract. *Landolt v. Stratmann*, 87 Ill.App.2d 81, 230 N.E.2d 498.

In any event, the contract between the parties is clear that if there was any duty to remove the spoil, that duty lay with the City of Des Plaines and not the State of Illinois.

Section 17 of the written contract states:

The COMPANY reserves the right to use, occupy and enjoy its tracks, property and right-of-way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it. If any such use shall necessitate any change, repair, renewal, removal or relocation of said structure or drainage facilities, the CITY shall perform such work at such time as the COMPANY may approve and if the CITY fails to do so such work may be performed by the COMPANY at the expense of the CITY and the COMPANY shall not be liable to the CITY on account of any damage growing out of any use which the COMPANY may make of its tracks, property and right-of-way.

Section 20 of the agreement states:

... any expense in restoring the COMPANY's property to its prior condition or to a condition satisfactory to the COMPANY shall be borne by the CITY.

These terms of the agreement clearly specify that it is the duty of the City of Des Plaines to effect any removal that the Railway should desire.

For the foregoing reasons, this claim is hereby denied.

(No. 5779—Claimant awarded **\$12,000.00.**)

GEORGE WEST, Claimant, *us.* **STATE OF ILLINOIS**, Respondent.

Opinion filed October 22, 1976.

JOHN R. SNIVELY, Attorney for Claimant.

WILLIAM J. SCOW, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—evidence. Where evidence indicated that State was aware of malfunctioning of punch press, and no steps were undertaken to repair the press, State did not use reasonable care in maintaining it.

PERLIN, C. J.

Claimant, George West, has brought this action to recover for personal injuries sustained by him on March 18, 1968, when his left hand was caught in a punch press in the metal shop of the Illinois State Penitentiary at Joliet, Illinois.

In Count One of his complaint, Claimant alleges that Respondent was negligent in failing to use reasonable care in maintaining the punch press, in failing to provide Claimant a reasonably safe place to work, and in failing to adequately instruct Claimant in the operation of the machine. In Count Two Claimant alleges that Respondent violated a statutory duty in failing to comply with certain Provisions of the Health and Safety Act of the State of Illinois, in that Respondent permitted the punch press to operate without safety devices required by the Act.

Claimant was incarcerated in the Joliet correctional facility in 1964. Sometime in 1965 he requested a paying job and was assigned to the metal shop. Shortly thereafter he was assigned to operate the punch press in the shop and had been operating the press daily for about three years prior to the date of the accident.

The punch press was a device for stamping metal into required shapes. It was operated by means of a foot

lever which, in theory, had to be depressed before the punch would descend.

Claimant said that from the time he first started working on the press, he observed that the press would occasionally “double clutch”—that is, it would descend without the foot lever being depressed. He estimated that the press double clutched “maybe every hundred times,” although he could not anticipate when it would do so. Claimant stated that he reported the defect to the shop foreman who was a prison guard but that Respondent made no attempt to repair the machine. Claimant attempted to fix the press himself but was not able to do so.

On the day of the accident Claimant was punching metal into garbage can lids using a rubber based die. He said that occasionally when the press would descend bits of metal would stick to the rubber die, and it was necessary for him to remove the metal pieces before the press descended again, or the press would not make the proper imprint. He was in the process of removing metal bits from the rubber die with his left hand when the press “double clutched,” descending on the fingers of Claimant’s left hand.

The second and third fingers of Claimant’s left hand were smashed, and the first phalanx of the first finger and little finger were also injured. The first and part of the second phalanx of Claimant’s second finger and almost all of his third finger were amputated. Claimant said that he did not have any feeling in his index finger, and that he underwent additional corrective surgery on the second and third fingers to round off the bones and to insert additional padding under the skin.

Claimant had been an interior decorator prior to his incarceration. Upon his release from prison he resumed

his former occupation, and testified that he was hampered in his work by the loss of use of part of his left hand.

Claimant introduced into evidence the Health and Safety Act of Illinois and the Health and Safety Rules A through J as promulgated by the Industrial Commission of Illinois. Those provisions provide, in substance, that a punch press such as the one on which Claimant was injured must be equipped with specified safety devices designed to insure that an operator's hands do not come within the striking zone of the press.

To recover on his common law cause of action Claimant bears the burden of proving, by a preponderance of the evidence, that Respondent was negligent in maintaining the punch press; that he was free of contributory negligence; and that Respondent's negligence was a proximate cause of his injury.

The record does tend to establish that Respondent permitted the punch press to operate without appropriate safety devices. It is also apparent that Claimant had provided Respondent with actual notice of the tendency of the punch press to periodically malfunction, but that Respondent took no steps to repair the press. From these facts, we conclude that Respondent did not use reasonable care in maintaining the punch press.

We also think that Claimant has sustained his burden of proving his freedom from contributory negligence. Respondent argues that Claimant knew that the punch press had a tendency to malfunction, and that he should have refused to work on the defective machine. However, Claimant, as a prisoner, was not a "free agent." He would have been subject to disciplinary action had he refused to perform his work. A worker in private industry would be able to assert a grievance and

refuse to work on an unsafe machine. An inmate, working under orders to perform an assigned task, cannot be bound by the doctrine of assumption of risk on the same terms as a worker in private industry. The record is uncontradicted that from time to time pieces of metal stuck to the rubber die, and that if Claimant had not picked them off succeeding imprints would have been faulty. Claimant's testimony established that he was operating the machine in a reasonable manner, and we conclude that he was free of contributory negligence.

We further find that Respondent's negligence was a proximate cause of Claimant's injury.

Claimant is hereby awarded the sum of Twelve Thousand Dollars (\$12,000).

(No. 5800—Claim denied.)

LYMANN HALLEY, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed December 3, 1967.

ROSS ARMBRUSTER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON**, Assistant Attorney General, for Respondent.

NEGLIGENCE—duty to patients. The State cannot escape its duty to an individual merely because he or she is a patient of an institution. The State must provide protection and exercise reasonable care as the patient's known condition may require.

SAME—evidence. Where evidence indicated usual practice of the hospital was to mop the floors of the bathrooms after breakfast and then to lock bathroom doors until the floor dried, and that an attendant was watching Claimant for virtually the entire day, negligence in failing to care for the Claimant cannot exist.

BURKS, J.

The complaint seeks damages for personal injuries alleged to have been sustained when Claimant allegedly

slipped on a bar of soap while a patient at Alton State Hospital. The soap, Claimant contends, was negligently left on the floor by an attendant in the restroom on January 12, 1969.

The Claimant, who had been treated at Alton State Hospital on prior occasions, was admitted again on January 10, 1969, suffering from alcoholic withdrawal, shaking, and admitting under cross-examination, that he had been hospitalized five times for alcoholism and had been an alcoholic for 14 years. Prior to this confinement he had been in a fight in a laundromat owned by his brother in East St. Louis. In the fight he sustained some broken ribs and some stitches taken in his head. He continued to drink until the 4th or 5th of January when he was picked up by the Cahokia police for walking in the road. Although he insists that he was not drunk at this time, he does state that he was sick, weak and wobbly. He was in the City Jail at Cahokia for two or three days, then spent one or two days in the County Jail. From there he was taken to Alton State Hospital, still feeling sick and shaky. On the day he was admitted, January 10, 1969, he was assigned to Birch Cottage. Claimant testified that he was able to sleep a little bit more at Alton State Hospital than he had been able to do in jail. He denied any blackouts on the 11th or 12th of January. Claimant testified that on January 12, 1969, although he slept pretty good during the night, he felt bad when he got up, being sick to his stomach and had what seemed like a hangover, but not an alcoholic hangover, a fact he did not explain.

Claimant awoke on the morning of January 12, 1969, at about 7:00 with a headache and upset stomach. Claimant testified that he had not eaten for three days and that he refused breakfast on that morning. He requested medication which was denied. Claimant then

sat in a chair in the dayroom while the other patients of Birch Cottage had breakfast. Both psychiatric aides, Suzanne Mitchem Schaefer and Joan Hazzard, recall refusing Claimant medication and both testified that Mr. Halley fell asleep while seated in the dayroom during breakfast.

Claimant, sometime during breakfast, went to the washroom "walking carefully" because he was having "a little difficulty walking." While in the restroom he fell, hitting his head on the handle of the toilet. Claimant testified that at first he didn't know how or why he slipped and fell, but the next day when he was admitted to the Medical-Surgical Hospital, he discovered a small slice of soap on the sole of his shoe. He further testified that at the time he fell, the **tile floor** of the **restroom** appeared to be wet in spots as if it had been mopped. Mr. Halley testified that he showed the soap to Mrs. Barbara Phelps at the Medical-Surgical building, but she does not recall Mr. Halley showing her the soap.

The psychiatric aides, Suzanne Schaefer and Joanne Hazzard, checked the bathroom floor and did not notice whether it was wet. Nurse Stevenson indicated that it might have been. As for the existence of a banana peel or pieces of soap on the floor, all three witnesses denied that condition.

According to the three aides, the bathrooms were mopped three times a day and the first time was not until after breakfast. After mopping, the door would be locked until the floor was dry.

The medication which Claimant received was prescribed by Dr. Rosita Sumagang who prescribed: Librium, 25mg. three times a day at 8:00 a.m., 1:00 p.m., and 6:00 p.m.; Glibrum, 100mg. PRN (as needed); Chloral Hydrate, 500mg. at night, plus aspirin and

vitamins. Librium is prescribed for patients who are agitated, particularly if having delirium tremens. Chloral Hydrate, unlike Librium, is a sedative for which the hypnotic dosage is between 500mg. to 2000mg., depending on the patient. The record is clear that the Claimant was blind in the left eye after his fall on January 12, 1969.

We find that the Claimant has not shown by a preponderance of the evidence that the Respondent was negligent in its treatment of him nor in its maintenance of the ward.

It is fundamental that the Respondent is not an insurer of the safety of persons residing at the various State Hospitals under its jurisdiction. Rather, the Respondent is to be held to that degree of care which a reasonably prudent individual or organization would exercise under the same and similar circumstances. *Lindberg v. State of Illinois*, 22 Ill.Ct.Cl. 29; *Ward v. State*, 24 Ill.Ct.Cl. 142.

In *Lindberg* the Claimant slipped and fell on a lavatory floor which was moist, wet and slippery. *Lindberg* at 30. The court found that the Claimant was an "invitee" at the State Park and lacking a showing that Respondent knew or in the exercise of a reasonable care should have known that the floor was slippery at the time of the accident, the State could not be found negligent. *Lindberg* at 38.

The facts in the instant case correlate with *Lindberg* in that the record is devoid of any showing of notice, actual or constructive, as to a dangerous condition of the lavatory floor. Furthermore, the testimony of the psychiatric aides and nurses shows the opposite to be true. The bathrooms were *not* mopped until 8:30 a.m., both after breakfast and after Claimant's fall. If Claim-

ant did fall on a piece of soap the size of a quarter, as he maintains, then there still is no showing that the Respondent knew or in the exercise of reasonable care should have known of the condition, for the soap could have been dropped there by any one of the numerous patients in Birch Cottage. Of course, the above assume that Claimant fell as a result of the soap on his shoe found the following day by Claimant. This, even if viewed most favorably for Claimant, hardly is more than supposition and insufficient to meet Claimant's burden of proof.

We also find that the Claimant failed to exercise due care for his own safety. Claimant freely admits that he was feeling ill, had not eaten for three days, and was under sedative medication. He states that he walked carefully because he was having trouble walking. In *Lindberg* the Claimant stated that she was walking carefully because the floor was wet. In *Lindberg* the court found that Claimant assumed the risk when she walked on a wet floor she knew to be such. Here, **Mr.** Halley not only says that he knew that the floor was wet, but that he was also having difficulty walking. Whether his difficulty was due to his condition of alcoholic withdrawal or lack of food and sleep, or the medication he was receiving, **or** a combination of the above is unclear. However, the Claimant assumed all normal, obvious or ordinary risks attendant on the use of the premises. **To** walk as Claimant contends on a freshly mopped lavatory floor, when mere walking was difficult, is not a sufficient showing of an exercise of due care for one's own safety.

Claimant has not shown why he could not have asked for assistance from one of the psychiatric aides on the ward or that his mental condition was such as to

make him oblivious to the attendant dangers of walking on a freshly mopped floor.

The duty of an institution to protect its patients has been stated and the degree of care required has been amplified in *Slater v. Missionary Sisters of Sacred Heart*, 20 Ill.App.3d 464, 469:

Although a hospital is not an insurer of a patient's safety, it owes him a duty of protection and it must exercise the degree of reasonable care toward him as his known condition may require . . . Foreseeability of harm is an essential element to actionable negligence against a hospital for breach of duty of care to a patient. . . .

We agree that the hospital is under a duty to give reasonable care to the patient; that "reasonable" is to be determined by the foreseeability present; and that the duty of care required by the hospital towards a patient that is more likely to be injured is greater than the duty of care a hospital owes to another patient who is less likely to hurt himself or be hurt.

The Claimant alleges that the reason he fell was that the floor of the bathroom had been freshly mopped and soap had been left on the floor. The Claimant slipped and fell at the time the other patients were eating breakfast. All the testimony of the medical technicians and nurses aides agreed that the usual practice of the hospital was to mop the floors of the bathrooms after breakfast. The door to the bathroom that was mopped would be locked until the floor was dry. All the witnesses agreed that sometimes it was necessary to mop the floors at other than scheduled times, but none mentioned that the policy of locking the doors after mopping would at any time be abandoned.

The Claimant was being treated for alcoholism, had been medicated, and had not eaten for several days. It was obvious from the amount of notations that were recorded about the Claimant as a patient that he was

closely watched. The amount of time that elapsed between the point Joanne Hazzard, a mental health technician, left the Claimant asleep in a chair, and the time she saw him on the bathroom floor was about 10 minutes. During this period the Claimant, knowing that he was unsteady on his feet, walked past the nurses' station without notifying anyone, and fell in the bathroom.

To impose liability upon the Respondent under the facts in this case would be holding that anything less than a full-time bodyguard would constitute negligence on the part of the Respondent. Such is not the law.

This claim is denied.

(No. 5845—Claim denied.)

RONALD EDWARD COFFEY, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 21, 1977.

CHARLES BOYLE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLLA, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—wrongful incarceration. Prerequisite to recovery for wrongful incarceration is grant of pardon on grounds of innocence. Section 8(c) of the Court of Claims Act will also not apply until or unless a conviction has occurred.

POLOS, C. J.

This is an action pursuant to the provisions of Ch. 37, Section 8(c) of the Court of Claims Act, Ill.Rev.Stat., Ch. 37, §439.8(c), which grants this Court jurisdiction over:

All claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the Governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned.

From the stipulation of facts entered into between the parties, it appears that Claimant was arrested on March 3, 1968, and subsequently indicted for the murder of one Fredrick H. Haye. Claimant was held without bond in the Cook County Jail from March 3, 1968, to March 27, 1969, when he was released without having been tried for the crime.

On December 19, 1975, Claimant received a pardon on the ground of innocence from the Honorable Dan Walker, then Governor of Illinois.

Respondent contends that this claim must be denied on several grounds: that Claimant was never imprisoned in a "prison of this State," that a prerequisite to recovery for unjust imprisonment is that one be convicted of a crime, and that incarceration while awaiting trial is not "unjust imprisonment" within the meaning of the statute.

Claimant in turn asserts that Section 8(c) of the Court of Claims Act is intended to compensate one incarcerated prior to a trial, and that the Cook County Jail is a "prison" of this State within the meaning of the statute.

Thus, the issue for consideration is whether a Claimant may recover for time served in a county jail awaiting trial where he is not subsequently convicted of an offense. Put another way, does Claimant's incarceration without bond prior to trial on a charge of murder constitute "time unjustly served in prisons of this State" where Claimant was never subsequently convicted of an offense and was released from the County Jail without trial?

We believe, and so hold, that jurisdiction lies under Section 8(c) of the Court of Claims Act only where a Claimant has first been convicted of an offense, and

then unjustly imprisoned in a prison of the State of Illinois. Our conclusion is based in part upon a consideration of Article V, Section 12 of the Constitution of the State of Illinois, which provides:

The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law (Emphasis added).

Thus, the Governor's power to pardon for an offense is expressly conditioned upon there having been a conviction for that offense, and the jurisdiction of this Court to entertain a claim for unjust imprisonment is expressly conditioned upon a Claimant first having received a pardon. It, therefore, appears self-evident that we cannot entertain a claim for unjust imprisonment unless there has first been a conviction, and then a pardon issued in accordance with the Article V, Section 12 of the Constitution, which conditions the Governor's power to pardon upon the existence of a conviction.

The Court also notes that there was in effect at the time of Claimant's incarceration a statute commonly known as the "Four-term Act," Ill.Rev.Stat., Ch. 38, §103-5, which provides that one in custody must be tried within 120 days of his incarceration "unless delay is occasioned by the defendant."

Claimant testified during the course of the hearing herein that his case was continued by him at least twice. It, therefore, appears that Claimant's own actions, in continuing his trial on two occasions, caused his incarceration for a period in excess of 120 days.

Were this Court to permit a recovery in this case, it would open the door to thousands of claims by individuals who were incarcerated in local jails prior to trial and then released either without trial or after trial. Such a result would place an intolerable obligation upon the taxpayers of this State, and we are certain, in view of

the provisions of Article V, Section 12 of the Constitution of 1970, and Section 8(c) of the Court of Claims Act, that such a result was never intended by the legislature.

For the foregoing reasons, this claim must be, and hereby is, denied.

(No. 5882—Claimant awarded \$7,500.00.)

**VIRGINIA E. RINEHART, Claimant, *us.* STATE OF ILLINOIS,
Respondent.**

Opinion filed May 2, 1977.

LEON G. SCROGGINS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*res ipsa loquitur*. When a thing which caused the injury is shown to be under the control or management of the party charged with negligence and the occurrence is such as in the ordinary course of things would not have happened if the person so charged had used proper care, the accident itself, in the absence of an explanation by the party charged, affords reasonable evidence that it arose from negligence.

SAME—evidence. Where a patient at a mental hospital is bound by hands and feet, and yet receives a fatal dose of prescribed medication, the incident could not have occurred without negligence on the part of the employees of the State and recovery will be allowed on a theory of *res ipsa loquitur*.

HOLDERMAN, J.

Claimant, Virginia E. Rinehart, filed suit on behalf of herself and as guardian for children born to her and her deceased husband, Ben Jonas Rinehart.

Ben Jonas Rinehart died on December 6, 1969, while a patient at Alton State Hospital at Alton, Illinois. He had been a patient there on at least 13 other occasions and had entered the last time as a voluntary patient some time before Thanksgiving in 1969.

He worked, when he was able to do so, selling Family Record Plans and American Albums.

He was first hospitalized in **1959**. On December **5, 1969**, the deceased became very restless, pushing patients' beds around the hospital and causing considerable disturbance. There were approximately **32** beds in the dormitory.

He finally became so objectionable that he was restrained. He was placed in his bed and his hands tied with cloth to the bedposts. There is conflicting testimony as to whether or not his legs were also tied and it appears from the record that they were. He was still very noisy causing considerable commotion. The aides then called a doctor who was on duty relative to giving him a sedative.

The record indicates that at approximately **2:00** a.m. he was given an injection of Amytal. He had been given the same sedative the night before. After the sedative was administered, he became subdued.

The record further indicates that he was quiet until he was observed at about **5:30** a.m. breathing very heavily, and he died at approximately **7:00** a.m.

An autopsy was performed and an analysis made of his brain by Dr. Frank F. Fiorese of Elmhurst, Illinois. He was the Chief Toxicologist for the State of Illinois.

From his examination of the brain, the doctor testified that he found **3.47** milligrams of Seconal per one hundred grams of brain, which is **3.47** times a lethal dose, and by calculation established that the body had **2.08** grams of Seconal in the system.

When asked approximately how much of the injectable form would be necessary to reach the quantity of 2.08 grams, the doctor replied, "If I recall well, an injectable Seconal consists of two hundred fifty milligrams; so in order to reach that concentration in the body, about two grams, I feel at least eight vials of

Seconal containing two hundred fifty milligrams each.” When asked how many tablets would have had to be taken, he replied, “Let’s assume that we are dealing with one hundred milligram tablets. To reach two grams, about two grams, we would need about twenty tablets, twenty-one tablets.”

Dr. Ricardo Heath, who testified at the coroner’s inquest, stated that he treated Mr. Rinehart the night he died. He stated that he prescribed **7-1/2** grains of Amytal at about 2:00 a.m. the morning of December **6**. When asked if he had ever prescribed Seconal for Mr. Rinehart, the doctor replied, “No, I have never prescribed Seconal for any patient or Mr. Rinehart.” He further stated that the Amytal came in ampules which contained powder, and this is put in a solution with distilled water and injected, and stated that the Seconal came in capsules which was not injectable.

The nurse on duty and the nurse’s aide are both emphatic in their testimony as to the sedative that was given which, according to their statements, was Amytal.

It appears that all of the drugs are locked in a cabinet and a key has to be obtained when any of them are to be removed for purposes of administering them to a patient. The testimony of both the nurse and the aide was to the effect that they took the Amytal out, broke the capsule it was in, mixed it with water, and then injected it into the patient. The record is devoid of any other sedative being given to the deceased.

We, therefore, have a situation where the deceased, according to testimony given by the attendants, was bound by his hands and legs from approximately **1:00** a.m. to the time of his death so he would have been unable to administer any drugs to himself, either orally or by injection.

According to the toxicologist, the Seconal would have had to have been taken by the deceased three or four hours before his death, and it is clear from the evidence that he was unable to do this himself.

It was also established from the evidence that any drugs patients may have when they come into the institution are taken from them and given to the pharmacist.

The question of how the lethal dose of Seconal got into the system of the deceased remains one of pure conjecture as there is no evidence of any kind or character of Seconal being administered to the deceased. The record discloses only one injection of Amytal.

The toxicologist did not find any Amytal in the body of the deceased, but he stated this was not unusual because it has the propensity to absolve and disappear rather rapidly so it could not be determined from his examination whether Amytal had been received by the deceased.

There exists several possibilities as to where the lethal dose of Seconal came from:

1. The dose which was supposed to have been Amytal could have been Seconal through a mistake in packing or on the part of those administering it;
2. Seconal given by another inmate—which seems rather far-fetched; or
3. The deceased administered the drug to himself which seems highly improbable, if not impossible, unless it was administered before 1:00 a.m., the time when he was subdued, because after that time he was physically unable to give himself the drug.

Claimant's theory is that of *res ipsa loquitur*, or, the facts speak for themselves. According to Claimant's

theory, someone on behalf of Respondent made an error that resulted in the death of the deceased. Circumstantial evidence is being relied upon by Claimant as there is no direct evidence to sustain her position.

The fact that the drug, according to the toxicologist, must have been administered after the patient was subdued strengthens Claimant's position that an error was made when Seconal was mistakenly administered to the deceased instead of Amytal, or that someone somehow administered Seconal to the deceased. In any event, the deceased did die of a tremendous amount of Seconal.

The attendants in the hospital testified at considerable length to the care that is used in storing and handling drugs and stated that at all times these drugs are kept under lock and key and, before being used, a direct order by the doctor in charge has to be made to the nurse who then secures a key from a third party, removes the desired drug, mixes it, and administers the same. There is a constant check and a running inventory made of the drugs used by this department.

Testimony was that all Seconal in the cabinet were accounted for and none were missing, which adds further mystery to the question as to where the drug actually came from.

The Supreme Court of Illinois in *Edgar County Bank and Trust Company vs. Paris Hospital, Inc.*, 57 Ill.2d 298, 312 N.E.2d 259, stated: "Much has been written in recent years on the question of the applicability of the doctrine of *res ipsa loquitur* to medical malpractice and hospital negligence cases." Our examination of these articles, and the authorities collected in the annotations, leads us to conclude that much of the difficulty encountered in the cases arise from the failure to recog-

nize that the application of the doctrine of *res ipsa loquitur* does not affect the necessity or manner of proof or proximate cause, and that it is relevant only to the nature of the proof from which the trier of fact may draw an inference of negligence. In *Metz vs. Central Illinois Electric and Gas Company*, 32 Ill.2d 446, 207 N.E.2d 305, the Court stated:

When a thing which caused the injury is shown to be under the control or management of the party charged with negligence and the occurrence is such as in the ordinary course of things would not have happened if the person so charged had used proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the party charged, that it arose from want of proper care. This in essence is the doctrine of *res ipsa loquitur*, and its purpose is to allow proof of negligence by circumstantial evidence when the direct evidence concerning cause of injury is primarily within the knowledge and control of the defendant.

No reason appears why, given the appropriate state of facts, the doctrine is not applicable to an action involving medical malpractice and hospital negligence.

The testimony in this case indicates that the decedent, Ben Rinehart, was under complete control of the Respondent. The testimony also indicates that on the morning of his death he was completely restrained by the hands and feet and could not have taken any pills by himself or injected any substance into his body. The incident would not have occurred without some form of negligence on the part of Respondent and, finally, the Respondent made no attempt to explain how the lethal dosage of Seconal got into the system of the deceased.

The record is clear that for several years the earnings of the decedent were very limited and that the family lived on Public Aid and outside income other than that furnished by the deceased. The facts would indicate that his earning power would decrease rather than increase in the future and that any contributions he might have made to the family would have been minimal. It is also apparent that he had been admitted

to the hospital thirteen times in the past and, in growing older, his chances for improvement were very small.

An award is hereby granted to Claimant in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00).

(No. 5884—Claimant awarded \$11,223.15.)

IRMA G. YOUNGMAN, Claimant, *us.* **STATE OF ILLINOIS, ILLINOIS NATIONAL GUARD**, and **WILFRED D. SCHUMM**, Respondent.

Opinion filed May 31, 1977.

WILLIAM D. HANAGAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—evidence. Where Claimant's auto, proceeding straight in an east bound lane, was struck in the upper left by a State vehicle attempting to change lanes, the State was not in the exercise of ordinary care, and a claim is allowable.

HOLDERMAN, J

The claim for damages in this matter was filed by Claimant as a result of an automobile accident which occurred on May 12, 1970. The accident in question took place in the City of Mt. Vernon, near **830** Broadway Street.

Claimant's vehicle and Respondent's vehicle were eastbound in two lanes of eastbound traffic. Respondent's vehicle had overtaken Claimant's vehicle immediately after they had both passed through an intersection at which the traffic was controlled by a traffic light. Claimant's vehicle started up from a stopped position and after crossing the intersection, collided with the

right side of Respondent's vehicle which was attempting to change from the left lane to the right lane.

The left front fender of the Claimant's vehicle and the right side of the Respondent's vehicle were involved in the accident. Following the initial impact, Claimant's vehicle collided with the side of a car parked along the right side of the street. At the time of the impact, Claimant alleged she was traveling at approximately 10 to 12 miles per hour, and it appears the Respondent was traveling somewhat faster.

Claimant alleges that she sustained injuries in and about muscles and ligaments in her dorsal and lumbar spine, and that such injuries caused an aggravation of a pre-existing condition.

When the accident happened Respondent's vehicle, a National Guard truck, was returning from Southern Illinois University campus at Carbondale, Illinois, where it had been sent on a State mission to help maintain law and order.

Claimant was treated by local physicians until March **10, 1972**, when she went to see an orthopedic surgeon, Dr. Lee T. Ford, in St. Louis, Missouri. The initial examination showed that she had one-third limitation of the ability to move her back forwards, backwards, and to either side. A myelogram was done on August **12, 1970**, and showed a bulge on the lateral on the L4-5 level, a slight root sleeve asymmetry of the first sacral nerve root, and a small defect in the oblique right at the L4-5 level.

Dr. Ford diagnosed a herniated lumbar disc and back sprain. A laminectomy was performed on July **26, 1972**, resulting in the removal of bulging disc at the L4-5 level.

The medical specials are as follows:

Wabash General Hospital, Mt. Carmel, Ill.	
5/29/70 to 6/6/70 and	\$393.35
8/10/70 to 8/12/70	120.00
Dr. Ernest Lowenstein, Mt. Carmel, Ill.	
5/26/70 to 10/31/70	220.00
Dr. R. L. Fuller, Mt. Carmel, Ill.	
5/19/70	7.00
Dr. James M. Franco, Evansville, Ind.	
9/11/70	25.00
Schultz's Evansville, Ind.	
6/15/70 Lumbo Sacral support	13.26
Second support - no receipt	13.26
Hadley Pharmacy, Mt. Carmel, Ill.	
Drugs, 5/12/70 to 11/70	85.30
Dr. Don Pruitt, Mt. Carmel, Ill.	
9/11/70	93.00
	<hr/>
	\$970.17

Supplemental Medical specials:

Barnes Hospital 3/11/72 to 3/18/72	\$942.00
Barnes Hospital 7/26/72 to 8/5/72	1,495.15
Dr. Lee Ford, St. Louis, Mo.	738.00
Dr. Ronald Evans, St. Louis, Mo.	48.00
	<hr/>
	\$3,223.15

Before recovery can be made by Claimant, she must prove she was in the exercise of due care and caution for her own safety, and that the State was negligent and that such negligence was the proximate cause of the accident.

It is clear from the record in this case that the Claimant was in the exercise of due care, and that she in no way contributed to the accident. It is also apparent that the State was negligent, and that the negligence of the State was the proximate cause of the accident. Claimant was in a proper position in her lane, and the swerving of the truck of Respondent was the cause of the accident.

It appears that as the result of the accident and the

surgical procedures following said accident, Claimant has suffered permanent injury to her back.

It further appears that prior to this accident, Claimant was earning approximately **\$54.00** per week; but since her accident, due to her physical condition she is no longer able to work.

An award is hereby made to Claimant in the amount of **\$3,223.15** for medical expenses, \$5,000.00 for loss of earnings, and **\$3,000.00** for pain and suffering, or a total award of Eleven Thousand Two Hundred Twenty-Three And 15/100 Dollars (**\$11,223.15**).

(No. 5894—Claimant awarded \$8,500.00.)

GEORGE R. HAMMOND, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed June 16, 1977.

SUEKOFF & SILVERMAN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—wrongful incarceration. To recover for wrongful incarceration a Claimant must show by preponderance of the evidence that he was innocent of the “fact” of the crime for which he was convicted. It was not the intention of the General Assembly to open the treasury to technical innocence of a crime.

SAME—evidence. Where testimony was conflicting, and an issue of credibility of witnesses thus arose, and where officer could not identify Claimant as the man who allegedly attempted to rob him, innocence of the fact of attempted robbery is shown.

POLOS, C. J.

This action is a claim against the State for time unjustly served in a prison of this State, brought pursuant to Ill.Rev.Stat. Ch. 37, §439 8(c). On February 20, 1964, Claimant, George Hammond, was convicted by a jury in the Circuit Court of Cook County of attempted

robbery, and sentenced to a term of 10 to 12 years in the Illinois State Penitentiary. A notice of appeal was filed on February 27, 1964, but was dismissed on April 25, 1967. On February 2, 1968, the State's Attorney of Cook County, Illinois, procured an order from the Circuit Court forfeiting Claimant's appeal bond, and a capias issued for his arrest.

On February 14, 1968, Claimant was arrested and incarcerated in the Cook County Jail. On March 22, 1968, Claimant was transferred to the Illinois State Penitentiary in Joliet and remained there until June 8, 1968, when he was released on bond pending his appeal which had been reinstated by his new counsel. Claimant remained free on bond thereafter, and on October 8, 1969, his conviction was reversed without remand by the Illinois Appellate Court, First District.

This cause is to be decided under the provisions of Section 8 of the Court of Claims Act as in effect prior to its amendment by Public Act 77-2089, effective October 1, 1972. That section provided, in pertinent part:

... §8. The Court shall have exclusive jurisdiction to hear and determine the following matters: ... (c) All claims against the State for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they were imprisoned ... provided, the court shall make no award in excess of the following amounts: ... for imprisonment of five years or less, not more than \$15,000 ...

The burden, therefore, rests upon Claimant to establish, by a preponderance of the evidence, that he was innocent of the "fact" of the crime for which he was convicted, and the amount of damages to which he is entitled. See *Tate v. State*, 25 Ill.Ct.Cl. 245; *Pitts v. State*, 22 Ill.Ct.Cl. 258.

As this Court said in *Dirkans v. State*, 25 Ill.Ct.Cl. 343, 347, in construing Section 8(c) of the Court of Claims Act prior to its amendment:

It is the studied opinion of this court that the legislature of the State of Illinois in the language of Ch. 37, §439.8(c), Ill.Rev.Stat., intended that a claimant must prove his innocence of the "fact" of the crime. It was not, we believe, the intention of the General Assembly to open the treasury of the State of Illinois to inmates of its penal institutions by the establishment of their technical or legal innocence of the crimes for which they were imprisoned.

Claimant testified, as he did at his criminal trial, that in the early morning hours of September **30, 1963**, he observed a man who appeared to be drunk standing at the intersection of Union Avenue and 63rd Place, in the City of Chicago. He said that he also noticed three young men in the vicinity. Claimant said that he approached the man to warn him of a possible robbery attempt by the three youths when the man pulled a gun and pointed it at him. Another man suddenly ran towards him, and he fled. The two men were police officers in plainclothes, and they captured Claimant and charged him with attempted robbery.

William O'Brien, a Chicago Police Officer, was the man whom Claimant approached on the morning of September 20, **1963**. O'Brien testified that an individual attempted to rob him by brandishing a knife at his throat, and that he was assisted by two black youths named Nielson and Jackson. O'Brien said that when he announced that he was a police officer and drew his gun, all three assailants fled the scene. Claimant was apprehended by O'Brien with the assistance of one of his partners who had been waiting in a nearby squad car. They subsequently arrested two other youths and charged all three with participating in the attempted robbery.

O'Brien said that he subsequently returned to the scene of the incident and found a knife in the street. He said that he marked it with his initials and caused it to be inventoried and sent to the Evidence and Recovered

Property Section of the Chicago Police Department. No fingerprints were taken from the knife.

Neither of the two officers who assisted O'Brien in arresting Claimant testified for Respondent, as they were not in a position to observe the incident.

Thus, we are faced with a problem of credibility. Claimant has testified to one version of the facts, and Respondent, through Officer O'Brien, presented directly contradictory testimony.

The Court notes, however, that O'Brien's testimony that he inventoried the knife is in conflict with his testimony at Claimant's criminal trial, where he stated that he kept the knife in his personal possession between the incident and the criminal trial. Also, in reversing Claimant's conviction, the Appellate Court stated, "The actual sequence of events immediately and during the alleged robbery attempt is not altogether plausible as related by O'Brien."

More significantly, Officer O'Brien testified at the hearing herein that he is presently unable to identify the individual who allegedly attempted to rob him on the morning of September 20, **1963**. Claimant's testimony that he did not attempt to rob Officer O'Brien thus stands uncontradicted on this record, as O'Brien was unable to identify Claimant as a participant in the robbery.

We, therefore, conclude that Claimant has established, by a preponderance of the evidence, his innocence of the "fact" of the crime with which he was charged.

As a result of his conviction, Claimant was incarcerated in the Cook County Jail from February **14, 1968**, to March **22, 1968**, and in the Illinois State Penitentiary

from March 22, 1968, to June 28, 1968. He was employed at the time of his incarcerations and claims a wage loss of \$2,783.20, as well as substantial out-of-pocket expenses related to the defense and appeal of the conviction, including attorney's fees.

We do not consider attorney's fees, and other costs incurred by Claimant in defending and appealing his conviction, to be proper elements of damage in this action. The action for wrongful imprisonment is wholly a creature of statute, and we think it clear that the Legislature intended to compensate one unjustly imprisoned only for the damages directly flowing from the imprisonment, not from the fact that one is charged or convicted with a crime.

Claimant is therefore awarded the sum of Eight Thousand Five Hundred Dollars (\$8,500) as compensation for his unjust imprisonment.

(No. 5907—Claimant awarded \$40,400.00.)

MATH MIKE RAJNOVICH, ET AL., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed *May 10, 1977.*

DEUTSCH and LEVY, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, SAUL R. WEXLER, WILLIAM KARAGANIS, and PEGGY BASTAS, Assistant Attorneys General, for Respondent.

NEGLIGENCE—jurisdiction. Employees of the National Guard called to active duty are federal and damages or injuries inflicted by these employees are compensable under federal, not state law.

SAME—defenses. The fact that an employee was in the National Guard called to active duty and compensation is to be made pursuant to federal law is not a jurisdictional fact, but should properly be raised in a motion to dismiss.

SAME—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—evidence. Where National Guard truck brakes failed and truck left road and struck two men sleeping on side of road, negligence arose.

SPIVACK, J.

Claimants each seek to recover from the State of Illinois the sum of \$25,000 for personal injuries allegedly sustained as a result of Respondent's negligence, whereby Claimant Rajnovich's decedent was killed and Claimant Doyle severely and permanently injured.

The cause was assigned to Commissioner J. P. Griffin who heard testimony and received the evidence on January **21, 1975**. In due time, the Commissioner filed with the Court his report, the transcripts of the testimony and argument, various exhibits and the parties' briefs and arguments. Neither party requested oral argument before the full Court, and the matter is now before us on the record as presented.

The pertinent facts adduced by Commissioner Griffin from the testimony of Claimant Doyle, of Claimant Rajnovich, of Robert Bennett, and from the evidence deposition of James A. Glenos, as well as from the pleadings and exhibits admitted into evidence, are in summary as follows:

On August **23, 1969**, at about 7:45 a.m., Claimant Doyle and decedent Rajnovich were operating their motorcycles in a northerly direction on Interstate **94**. At Toll Plaza **25**, they paid their toll and requested and received permission from the attendant to park their motorcycles and to rest in a grassy area adjoining the toll booth. They proceeded to an area approximately **15** feet east of the paved portion of the highway where they chained their vehicles and went to sleep under some

bushes. The weather was warm and clear and the pavement dry.

At about this time, Private James A. Glenos was operating a National Guard truck northerly on Interstate **94** at a speed of **45** m.p.h. When he was within 200 yards of the toll booth, he applied his brakes but they failed; when he was within **75** feet of the booth, his speed had reduced to about 20 m.p.h. and he pulled the handbrake, however, it too failed to stop the vehicle. At the last minute, to avoid striking an automobile parked at the toll booth, he veered off the highway, striking the sleeping men in the bushes whom he did not see and could not have seen.

As a result of this tragic occurrence, Rajnovich was killed and Doyle sustained diverse injuries, including broken bones and soft tissue damage.

The testimony indicates that shortly before the occurrence, prior to taking the truck from the National Guard Compound, Glenos "inspected" the vehicle. Specifically, he tested the foot brakes by stopping and starting, and they appeared normal; he tested the lights, wipers, horn and tires, and they all were normal and operational; he did not test the handbrake except to disengage it from its locked position upon start-up.

An inspection of the vehicle following the accident showed that the brake failure was caused by loss of brake fluid caused by a broken brake line elbow, which in turn resulted in a misaligned brake line which caused unusual stress at the elbow. Additionally, the inspection indicated that the handbrake held only on the last notch.

The evidence further proved that the vehicle, a **2-1/2** ton **M-135** Cargo truck, was the property of the United States, although issued to the Illinois National

Guard for its use and was at the time of the occurrence being used for Federal rather than State purposes.

At the time of his death, Math Jack Ragnovich was **22** years of age. He left surviving him his father, mother and minor son, Michael Jack James Rajnovich. Funeral, cemetery and related expenses, including estate expenses, totalling **\$1,816.40** were advanced by the father. Although decedent was a skilled mechanic, his most recent earnings were meager and the amount of his actual contribution to the support of his minor son questionable. Decedent's motorcycle, which was a total loss, had a market value of approximately **\$1,900.00**.

Claimant Doyle was also **22** years of age at the time of the occurrence. As a result of his injuries, his medical, hospital and related expenses, all of which were reimbursed by insurance, amounted to approximately **\$600.00**. His motorcycle, totally destroyed, had a market value of about **\$1,500.00**. Claimant's average earnings were **\$150.00** per week and he was unable to work for a period of six and one-half months following the accident.

At the outset, we are confronted by the argument of the State, which it characterizes as 'Ijurisdictional': that regardless of the actual question of negligence, the Claimant ought not to prevail since at the time of the occurrence, the vehicle was on a Federal, rather than State, mission. Thus, argues the State, the Claimant's proper remedy, whenever the National Guard is called to active duty under *Title 10, U.S. Code* or to inactive training under *Title 32, U.S. Code*, is to proceed against the Federal Government, pursuant to applicable provisions of either the Federal Tort Claims Act or the National Guard Claims Act. Each such Act contains a two year Statute of Limitations. Citing *Speer v. State*, 27 Ill.Ct.Cl. 188; *McRaven v. State*, Court of Claims No. 5586, *Dobbs v. State*, Court of Claims No. 5312.

In order to properly dispose of the State's first contention, it is necessary to understand the chronology of the material facts: (i) the event giving rise to the claim occurred on August **23, 1969**; (ii) the instant claim was filed on August **24, 1970**; (iii) the *Speer* case, *supra*, which was the case of first impression in this Court on the issue, was entered on April **27, 1971** (four months *before* the expiration of the limitations section of the federal statutes); (iv) the State filed its Motion to Dismiss on December **13, 1971** (four months *after* the Federal statute had tolled); (v) on February **9, 1972**, having received no objection to the State's Motion to Dismiss, this Court dismissed the cause; (vi) Claimants filed their Motion to Vacate and Reinstate on November **16, 1972**, to which no objections were filed by the State; (vii) on December **1, 1972**, and again on December **11, 1972**, the State confirmed to this Court that it had no objections to affording Claimants a hearing on the merits; (viii) on January 9, **1973**, this Court entered its Order vacating the prior dismissal and reinstating the cause.

The State now contends that the prior Order of January **9, 1973**, vacating the dismissal of February **9, 1972**, and reinstating the cause did not address itself to the issue before us and that in any event, *Speer* stands for the proposition that the issue is jurisdictional and can accordingly be raised at any time. We disagree. It is clear from the record, and from the information given this Court by the State on December **1, 1972**, and again on December **11, 1972**, that this is the precise issue considered by all parties and determined by the January **9, 1973**, Order of Reinstatement. We can only speculate that the rationale behind the State's position heretofore expressed on December **1, 1972**, and December **11, 1972**, was that, by waiting eight months following *Speer* be-

fore it filed its original Motion to Dismiss, the State equitably shared in the fault of Claimants in not pursuing in a timely fashion their Federal remedies and ought not benefit thereby.

We likewise disagree with the State's interpretation of *Speer*, and the line of cases following, as standing for the proposition that the issue goes to this Court's *jurisdiction*. To the contrary, we support the holding of *Speer* which finds that the issue simply creates a valid defense to the claim. At page **189**, the Court stated, "Since they (National Guard members on a Federal mission) are not, at these times, performing a State function, any tort committed . . . would not constitute a tort by the State and no liability would ensue thereby. . . ." To summarize, since the matter is not jurisdictional, we find that the State's first argument is moot, it having been already decided by this Court on January **9, 1973**. Parenthetically, it is our view that the Order then entered was based upon sound equitable principles in light of the specific facts presented and in no way modifies the law as enunciated in *Speer* and subsequent cases.

It now remains to decide the case on its merits and in accordance with applicable and well-established law.

It is the burden of Claimants to prove by a preponderance of the evidence that (i) they were free from contributory negligence, (ii) that the State was negligent, and (iii) that the State's negligence was the proximate cause of the accident and of Claimant's injuries and damages.

It is our opinion that Claimants have in fact proven, by a preponderance of the evidence, that they were free from contributory negligence. Their act of leaving the paved portion of the highway to rest in an unpaved

grassy area, 15 feet from the edge of the road, with the knowledge and consent of the toll booth operator, did not violate their duty of ordinary care for their persons and property. No reasonable person could have anticipated that their resting place would be in the path of a vehicle which had driven off the highway.

On the question of the State's negligence, Respondent devotes a considerable portion of its argument to the proposition that Glenos was not negligent in driving off the highway and over the Claimants inasmuch as he could not have reasonably anticipated their presence in the bushes. In other words, that one of the necessary elements of negligence, foreseeability, was absent. We did not quarrel with the rationale of the cases on foreseeability cited, *i.e.*, *Cunis v. Brennan*, 56 Ill.2d 372; *Barnes v. Washington*, 56 Ill.2d 22; *Winnett v. Winnett*, 57 Ill.2d 7. We believe, however, that Respondent misapprehends the negligent acts of the State in regard to which Claimants have sustained their burden of proof.

The evidence establishes that the proximate cause of the State's vehicle leaving the highway was that the driver, Glenos, was responding (*arguendo*, reasonably) to the failure of his foot brake and emergency brake to stop the vehicle. If these failures were due to a latent defect, then ordinary care, maintenance and inspection would not have disclosed such impairments and the brakes' failures and subsequent proximate results would have been unavoidable and not compensable under any negligence theory. On the other hand, if the defects were patent, that is, known or reasonably discoverable, then the State breached its duty of ordinary care by not correcting the condition if known, or not discovering it if ordinary care would have disclosed it.

It is a legally insufficient defense for the State to simply prove a brake failure. Respondent has the addi-

tional burden of proving by a preponderance of the evidence that the defects were latent. *Savage v. Blancett*, 47 Ill.App.2d 355. In view of the evidence here that the brake line elbow rupture was caused by a misaligned brake line (which would have been apparent had it been examined prior to the accident as it was following the occurrence), that the emergency brake only held on the last notch, and that the emergency brake was in no wise tested before the fateful journey, we find that Respondent has failed to prove by a preponderance of the evidence that the defects giving rise to the brake failures were latent. To the contrary, we are of the opinion that each of the defects was patent and should in the exercise of reasonable care have been detected and remedied. The failure to so detect and remedy was negligent on the part of the State.

Respondent argues that *Savage* is only applicable if defendant alleges the latent defect as an affirmative defense. We do not agree. Although in *Savage* a special defense was filed, the rationale of the decision is in no way concerned with the parties' burdens of proof *as related to the pleadings*. We do not believe that the defendant has a lesser substantive burden of proof if he fails to file an affirmative defense than if he had so filed. To so hold would be an absurdity.

Respondent then argues that *McKinsey v. Morrissey*, 12 Ill.App.3d 156, limits the holding in *Savage*. *Again, we do not agree*. In *McKinsey*, the Court simply held that defendant's burden of proof was never presented to the jury and thus the "doctrine of latent defects" was never decided. Further, the facts in *McKinsey*, superficially similar to the case at bar, are critically different in one major area. In that case, defendant testified that the brakes had been repaired just one week before the accident. Thus, even without an instruction, the jury

apparently concluded that the brake failure was as far as defendant was concerned a latent and not a patent defect.

There is no real question here that the Claimant's injuries were proximately caused by the accident which was in turn proximately caused by the brake failure.

We conclude therefore that Claimants have sustained their required burdens of proof relative to freedom from contributory negligence, negligence of the State, and proximate causation.

On the question of damages sustained by the decedent's minor son, Respondent argues that decedent's poor work habits and sketchy support contributions rebut the legal presumption of substantial damages. We believe that this presumption of substantial loss, even without proof thereof, long the law of this State, *Jadowski v. State*, 26 Ill.Ct.Cl. 66, is well considered. As applied to the instant facts, does the fact that a 22 year old is not adequately assuming his responsibilities prove that he will not in the future? Common sense and the wisdom born of years tells us otherwise. Also, it is to be remembered that the law recognizes and enforces the father's duty to support his child, even if the father's predilections are otherwise. We do not therefore believe that the equitable and legal presumption of substantial financial loss to a minor for the wrongful death of his father without specific proof thereof has been rebutted by the evidence before us.

Claimant, Math Mike Rajnovich, Administrator of the Estate of Math Jack Rajnovich, is therefore awarded the sum of Twenty-Five Thousand Dollars (\$25,000.00) to be distributed in the following manner:

(1) To Math Mike Rajnovich, as reimbursement for funeral, estate and related expenses, the sum of \$1,816.40;

(2) To the estate of the decedent, as and for property damage, the sum of **\$1,900.00**; and

(3) To the guardian of the minor, Michael Jack James Rajnovich, in trust for the care and education of said minor, the sum of **\$21,283.60**.

Claimant, Donald F. Doyle, Jr., having sustained damage to his person and property in the sum of **\$16,000.00** and having been reimbursed in the sum of **\$600.00** which amount is therefore deducted in accordance with the Rules of this Court, is therefore awarded the sum of Fifteen Thousand Four Hundred Dollars (**\$15,400.00**).

(No. 5942—Claimant awarded \$2,500.00.)

ALLISON WELLS, Claimant, *us.* STATE OF ILLINOIS, and THE
BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY,
Respondent.

Opinion filed March 17, 1977.

JAMES THOMAS DEMOS, Attorney for Claimant.
ROBERT L. ARTZ, Attorney for Respondent.

NEGLIGENCE—*res ipsa loquitur*. Where the State is at all times in exclusive control of the instrumentalities which caused the injury to Claimant, and the injury is one which ordinarily would not occur in the absence of negligence, then the accident itself, in the absence of an explanation by the party charged, affords reasonable evidence that it arose from negligence.

SAME—evidence. Where student in ordinary care was injured when sidewalk gave way, which sidewalk was in the exclusive control of Respondents, *res ipsa loquitur* applies and negligence exists.

HOLDERMAN, J.

The uncontested facts of this case are that on January 6, **1970**, Allison Wells, female, age 20, a student at Southern Illinois University, was walking close to the edge of the public sidewalk in front of the Life Science Building at the University when a portion of the sidewalk under her right foot gave way causing her to

fall to the ground. As a result of the fall, she sustained a fracture of her right wrist.

Claimant testified that after she fell, she observed that a piece of the sidewalk had broken off.

Claimant's claim is based upon the doctrine of res ipsa loquitur and alleges that the sidewalk was under the control of Respondent, and that the negligence of the Respondent resulted in the damage sustained by Claimant.

It is Claimant's contention that the State of Illinois was guilty of negligence by reason of res ipsa loquitur, and the Respondent contends the doctrine of res ipsa loquitur is not applicable because there is no evidence in the records that indicates that employees of Southern Illinois University were negligent in carrying out the duty to see that the sidewalks were safe.

The only evidence introduced was to the effect that there had been a snowstorm in the area, and that the University had cleaned the walks and salted the same. This was proven by the Superintendent of Student Buildings and Grounds of the University.

The Respondent also alleges that the doctrine of res ipsa loquitur should not be applied in this case because there were specific acts of negligence on the part of the Claimant. It is Respondent's contention that to rely on this doctrine, the charge must be general and not specific negligence. The Respondent also raises the question of whether or not there was contributory negligence on the part of Claimant because she was walking along the edge of the sidewalk.

This Court, in the case of *Charles M. Kenney, Administrator, etc. vs. State of Illinois*, 22 Ill.Ct.Cl. 247, held as follows:

Under the maxim *res ipsa loquitur*, our Courts have announced many times that where a thing, which has caused injury, is shown to be under the management of the party charged with negligence, an accident is such as in the ordinary course of things does not happen, if the management uses proper care. The accident itself affords reasonable evidence in the absence of an explanation by the party charged, that it arose from want of proper care.

In the case of *McCleod vs. Nel-Co Corp.*, 112 N.E.2d 501, 350 Ill.App. 216, plaintiff rented a room in a hotel and, while in bed, plaster fell from the ceiling and landed on the head of the plaintiff. The Court in this case invoked the doctrine of *res ipsa loquitur* and stated:

... (R)equirement that before the rule of *res ipsa loquitur* can be applied it must appear that the instrumentality was under the management and control of the defendant does not mean or is not limited to actual physical control, but refers rather to the right of control at that time.

It is undisputed in this case that the university did have control of the sidewalk. The Court finds no evidence of contributory negligence on the part of Claimant.

It is the opinion of this Court that the Respondent is liable for the damage inflicted on Claimant.

The Court hereby makes an award to Claimant, Allison Wells, for her medical expenses and pain and suffering in the amount of Two Thousand Five Hundred Dollars (\$2,500.00).

(No. 5989—Claim denied.)

MARK YANUSHIS AND GRANE TRUCKING Co. Claimants, *vs.*
STATE OF ILLINOIS Respondent.

Opinion filed April 28, 1977.

GORDON, BRUSTIN & SCHAEFFER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; TERRY NORBET TAMILLOW, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order for the Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety.

SAME—contributory negligence. Where evidence indicated driver failed to maintain a proper look out, recovery will be denied.

SPIVACK, J

The claim herein presented for consideration sounds in tort. More specifically, for personal injuries sustained by Claimant, Yanushis, and for property damage sustained by Claimant, Grane Trucking Company, all as a result of the alleged negligent operation of a patrol vehicle belonging to the Illinois Department of Law Enforcement while under the control of and being operated by Corporal Richard E. Johnson, a member of the said department.

Hearings were conducted before Commissioner J. Barry Fisher. The testimony introduced was of the individual Claimant, of a representative of the Claimant trucking company, of **Corporal** Johnson, of Robert Townsend (an independant eye witness), and of Barbara Prokopek (another independent eye witness). Additionally, various documents were received in evidence and are a part of the record.

The following salient facts herein summarized were established by Commissioner Fisher and duly reported to the Court:

On January 27, 1970, at about 11:00 a.m., a collision occurred between a semi-trailer belonging to Claimant Grane Trucking and being driven by its employee, Claimant Mark Yanushis, and a patrol vehicle belonging to the Illinois Department of Law Enforcement and being driven by its servant, Corporal Johnson. The accident occurred in the westbound lane of Route 72, approximately one-half mile east of Route 53.

At that point Route **72** runs in a generally east-west direction.

The uncontroverted testimony indicates that the day was clear and bright, the road dry and the visibility excellent. Sometime prior to the accident Corporal Johnson was dispatched to the above mentioned location on Route **72** to direct traffic in order to effectuate the moving of a house trailer. When Corporal Johnson arrived a large tow truck which was to be used to move the house trailer was already parked on the south shoulder of Route **72**.

Subsequent to Corporal Johnson's arrival both the tow truck and the State patrol vehicle were moved to the north shoulder. Both vehicles were now facing in a westerly direction with the patrol vehicle in front of the tow truck. After the vehicles were moved to the north shoulder, the flashing amber lights of the tow truck and the mars lights of the patrol vehicle were turned on and remained on at the time of the occurrence resulting in this action.

Mark Yanushis was driving a tractor-trailer in a westerly direction on Route **72**. As he approached the parked vehicles on the north shoulder he admitted that he saw the tow truck, although stated that he saw no flashing amber lights on the tow truck, and he further stated that he saw no other vehicles parked on the north shoulder nor did he see any persons on the highway itself.

The State presented testimony of three witnesses that prior to the Claimant's approach Corporal Johnson had stopped eastbound traffic and that as Claimant came into view Corporal Johnson was standing in the center of Route **72** facing the westbound traffic. Further, this uncontroverted testimony indicated that Corporal

Johnson had both hands and arms raised indicating to the westbound traffic to come to a complete stop.

The testimony of the State's witnesses is, and the Claimant himself admits, that he slowed down. Corporal Johnson then stated that he thought the Claimant understood that traffic was being stopped, and hence the Corporal moved from the center of the road to his patrol car in order to pull his patrol car to the middle of the road to act as a barricade as the house trailer was moved onto the road. Witness Townsend remained in the middle of the highway, facing east, arms outstretched toward westbound traffic.

Claimant testified that he did not see either Corporal Johnson or Townsend in the middle of the road but only slowed down upon seeing the tow truck on the shoulder.

Although the Claimant slowed down, he never came to a complete stop and was unable to avoid a collision with the patrol car which Corporal Johnson had just moved from the north shoulder to the middle of the road.

Just before the actual impact, Witness Johnson ran from the middle of the highway when the vehicle of the Claimant was between **25** to 50 feet from him.

Claimants' first burden in proving liability against the State is to show by a preponderance of the evidence that they were free from contributory negligence and were in the exercise of due care and caution for the safety of their persons and property. *Wasilkowski us. State*, Ill.Ct.Cl. (August **6**, 1973); *Weygandt us. State*, 23 Ill.Ct.Cl. **478**.

Claimant Yanushis has failed entirely to sustain this initial evidentiary burden. **No** reasonable explanation is given for his failure to observe the State Trooper

standing arms outstretched in the middle of the highway; no reasonable explanation is given for his failure to observe Townsend also standing in the middle of the highway within, at one point, **25** to **50** feet of him; no reasonable explanation is given for this failure to observe the flashing lights on the tow truck or the rotating mars light on the patrol vehicle which at impact was straddling the westbound lane. The *only* explanation given is that Claimant Yanushis simply did not see these various things. It is clear that the law imposes upon a motorist a duty to at all times maintain a proper lookout. This duty involves more than merely looking. It involves seeing what is clearly visible. *Herald us. Weitzenfeld*, **351** Ill.App. **193**; *Krea us. Ricci*, **14** Ill.App.3d **904**. Claimant Yanushis may have looked but certainly did not see what was ahead. Thus, he failed in his legal duty to maintain a proper lookout and was himself negligent.

Claimant Grane Trucking Compony is bound by the contributory negligence of its agent and servant, Yanushis. No testimony was offered that Yanushis was an independent contractor or had some other relationship to Grane Trucking which would negate the imputability of negligence.

In view of our opinion that Claimants did not prove by a preponderance of the evidence their freedom from contributory negligence it is not necessary to determine whether on the evidence presented Claimants sustained their additional burdens of proof relative to Respondent's negligence, proximate cause, and the like.

The claim is hereby denied.

(No. 6167—Claimant awarded \$1,035.00.)

STEPHEN R. CASTLEMAN, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed July 1, 1976.

GEITTMAN and FOSTER, by TERRY J. FOSTER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN and DOUGLAS G. OLSON, Assistant Attorneys General, for Respondent.

NEGLIGENCE—*prima facie* case. Where Respondent fails to offer any evidence in rebuttal to the complaint, departmental reports and evidence of the Claimant, the court must conclude the Claimant has carried the burden of proof.

CONTRIBUTORY NEGLIGENCE—*bailments*. Where Claimant-bailor loaned car to the bailee who left the ignition keys in the car which was later destroyed, actions of bailee cannot be imputed on bailor as acts of contributory negligence.

BURKS, J

This is a claim for damages to Claimant's property caused by escaped inmates of a State controlled institution.

Claimant brings this action under the provisions of Ill.Rev.Stat., Ch. 23, §4041, to recover damages to his 1967 Chevrolet Impala hardtop, which was admittedly stolen and wrecked by two escapees from the Department of Corrections' Fort Massac Boys Camp in Metropolis. The parties have agreed that the value of Claimant's loss by said damage is **\$1,035.00**

The facts are not in dispute. They are contained in the memoranda and reports of the Department of Corrections on this matter and the affidavit of the Claimant which were admitted into evidence by joint stipulation without objection by either party. The parties waived a hearing in this cause and stipulated that no further evidence would be introduced. Both parties have sub-

mitted briefs on the key question of negligence on the part of the State and on the question of contributory negligence by the Claimant.

The facts are summarized as follows: two youths, David May and Sammy McKinney, ran away from Fort Massac State Boys Camp on January 22, 1971, about 11:30 a.m. They escaped through the east door of the laundry room. This fact was discovered by the camp authorities when the two inmates failed to report for lunch at 11:45 a.m.

Before the two inmates were apprehended they stole two vehicles. They abandoned one and wrecked the other. They drove the first car a short distance, ran it off the highway and abandoned it. The escapees then hid until dusk. They then stole Claimant's automobile from in front of Claimant's home in the City of Metropolis. They were chased by City Police along a public street until the stolen car collided with a truck. Both escaped inmates required medical treatment for the injuries they suffered when they wrecked the Claimant's car.

The complaint filed by the Claimant charged that the State negligently failed to provide sufficient supervision and control over these inmates to prevent their escape. The only response to this charge we find in the meager record before us is the following statement by the Director of the Department of Corrections:

There is no question that the Department of Corrections had the duty to care and supervise these two wards prior to their escape. We question the degree of care required when the boys were in a limited security camp, such as Fort Massac Boys Camp.

We feel that the above statement is an insufficient and inadequate answer by the Respondent to Claimant's charges of negligence in its custodial responsibilities for the two escapees in this case. It is apparent from the crimes they committed that these two youths should

have been kept under greater surveillance than the ordinary inmates at this institution. The facts pertaining to the prior record of these two inmates were in the exclusive control of the Respondent and could have been presented had they been favorable to the Respondent. *U.S. Fidelity & Guaranty Co. v. State*, 23 Ill.Ct.Cl. 188 at 192.

There is an item of evidence which indicates that the Director of the Fort Massac institution apparently took no steps to prevent these two inmates from repeating their crime spree that caused Claimant's loss. In fact they escaped again four days later according to a footnote in a departmental interoffice memo which reads as follows:

David May and Sammy McKinney *again* ran from camp at 7:30 p.m. on 1-26-71 and were apprehended at 930 p.m. walking on Highway 145 approximately 4 miles from camp. They were placed in the County Jail to await return to R & D on 1-29-71.

As we said in *American States Ins. Co. v. State*, 23 Ill.Ct.Cl. 47 at 50, "Each of these escape cases rests upon their own peculiar set of facts and circumstances." In the case at bar, we hold that the evidence offered by the Claimant is sufficient to establish a prima facie case of negligence on the part of the Respondent. Since the Respondent offered no testimony on the point, we conclude that the Claimant has carried his burden of proving that there was some fault on the part of the State in failing to provide adequate supervision for these two young criminals who apparently were able to run away from the institution at will and with impunity.

We turn next to Respondent's contention that the Claimant was guilty of contributory negligence by the fact that the keys were in his car parked on a public highway in front of his home when it was stolen by the escapees. This is, as Respondent points out, a violation

of the *Illinois Vehicle Code, §11-1401* which reads as follows:

Unattended motor vehicles. No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine and removing the ignition key. [Emphasis added]

We agree with Respondent's effective argument that leaving the ignition keys in a car unattended on a public highway is prima facie evidence of negligence, *Ney v. Yellow Cab Co.* 2 Ill.2d 74 and *Kacena v. George W. Bowers*, 63 Ill.App.2d 27.

However, it was not the Claimant in this case who negligently left the keys in his car. Claimant had loaned his automobile to his father so that his father might attend a funeral. While the car was still in the father's temporary possession, the latter stopped in front of Claimant's home, left the keys in the car, came into Claimant's house to talk for about five minutes, came out, and found that the car had been stolen.

We agree with Claimant's argument that the negligence attributable to his father cannot be imputed to him since a bailment relationship existed between Claimant and his father. The father was bailee of Claimant's car. The general rule of law is that the negligence of a bailee cannot be imputed to a bailor. Illinois courts have held that the negligence of a bailee cannot be imputable to the bailor, as a matter of law. *Gilman v. Lee*, 161 N.E.2d 586, 589; 423 Ill.App.2d 61; *Keller v. Shippee*, 45 Ill.App. 377; also see 39 Ill.Bar J. 142 (1950).

Respondent argues that the bailment relationship had terminated before the car was stolen since the car had been returned to the Claimant when his father parked it in front of Claimant's home. We believe that controlling custom and usage on the redelivery of a car by a bailee would call for a handing over of the keys to

the bailor before the bailment is terminated *I.L.P. Bailment* §22.

Regardless of the precise moment that the bailment was terminated it was certainly still in effect when the father-bailee negligently left the keys in the ignition. Since that act of negligence cannot be attributed to the Claimant we find him free of any contributory negligence.

The Claimant, Stephen R. Castleman, is hereby awarded the sum of One Thousand Thirty-Five Dollars (\$1,035.00) for damages to his property.

(No. 6185—Claimant awarded \$38,618.91.)

EDWARD R. HEIL, ET AL., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed September 15, 1976.

DRACH, TERREL and DEFENBAUGH, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—where a right of recovery exists, the defendant cannot escape liability because damages are difficult of exact ascertainment.

CONTRACTS—Contents. It has been frequently held that deviations from plans may be orally authorized by the State, notwithstanding contract provisions that no extras will be allowed except as ordered in writing.

DAMAGES—erroneous specifications. Where erroneous statements are made in specifications prepared by the State, which specifications form part of the contract, and where a contractor relied upon the specifications and is misled, the State is liable for damages resulting from the erroneous statements.

BURKS, J.

This claim, founded upon a contract, invokes the Court's jurisdiction pursuant to the Court of Claims Act §8(b). The claim is for payment of money allegedly due

the Claimant for the performance of work done for the State under a certain contract designated as contract No. FR-198, referred to as the Addison Creek Channel Clean-out Contract. The contract generally provided for the channel clean-out of a certain portion of Addison Creek between St. Charles Road on the south and North Avenue on the north. This area lies to the west edge of Cook County, close to the Dupage County line.

In addition to the clean-out of Addison Creek, the contract provided for the removal of certain trees and the mulching, seeding and fertilizing of the banks in certain areas within the limits of the contract. The contract was awarded on June 29, 1970, through the then Department of Public Works and Buildings, Division of Waterways.

All work required under the contract has been completed by the Claimant and accepted by the State.

A dispute exists as to the amount of units of work actually performed for which the Claimant is entitled to be compensated at the unit prices stated in the contract. Units of excavation work are stated in cubic yards. Units of work for seeding and mulching are in acres. Claimant alleges that they excavated 15,842 cubic yards; that they were only paid for 9,304 cubic yards; and that the Respondent should pay for another 6,548 cubic yards at \$4.45 per cubic yard, totaling \$29,139.60.

A dispute also exists as to the amount to which the Claimant may be entitled for damages allegedly incurred by him in the completion of work by reason of the failure on the part of the Respondent to provide right-of-way for use of the Claimant in connection with the work to be performed, as shown on the contract documents. The complaint claims \$20,000.00 as the sum to which the Claimant is entitled for the State's lack of right-of-way.

There is also a disputed claim in the amount of **\$21,934.05** for damages allegedly due to flooded conditions of the channels at the time they were to be excavated. We find that part of the claim to be totally unsupported, and that nowhere in the contract is there to be found any reference to the condition of the channels.

Including the alleged flood damages, the complaint alleges that the entire amount to which the Claimant was entitled was **\$126,056.05**; that Claimant was paid the sum of **\$53,234.80**; and that the unpaid amount due the Claimant was **\$72,821.25**.

Respondent admits that it owes the Claimant an additional sum of **\$3,136.00** for tree removal, and that this amount would have been paid except for the fact that the appropriation had lapsed. The parties have stipulated that this figure is the correct amount for tree removal rather than the \$5,770.00 originally claimed.

Respondent does not deny that some amount of additional compensation may be due the Claimant for the additional excavation work admittedly performed in accordance with the direction of Respondent's resident engineer. The State says in its brief, "The Respondent concedes that the Claimant did a workmanlike job, and although paid for **9,304** cubic yards, did in fact remove more than that yardage." The questions for the court to decide here are question of fact, how much more yardage did the Claimant actually remove, and how much should the State pay for this additional work.

Respondent's position essentially consists of an attack upon the sufficiency of Claimant's evidence as to the amount of yardage excavated; that Claimant's calculations on the basis of semi-truckloads of dirt taken are inexact; that the efficiency factor referred to in Claim-

ant's exhibits is speculative, etc. We believe these objections should be waived under the rule we cited in *Egan v. State*, 24 Ill.Ct.Cl. 114, 117:

Where the right of recovery exists, the defendant cannot escape liability because the damages are difficult of exact ascertainment.

Respondent also covers the other side of the coin by suggesting that Claimant unnecessarily excavated more yardage than called for. However, we believe that the weight of the evidence supports our conclusion that the additional yardage removed by the Claimant was required by authorized deviation from the plans under the direction of the State's Resident Engineer, Mr. Courtney Smith. The State partially, though grudgingly, agrees in its brief:

The Respondent would agree that under **Mr.** Courtney Smith's direction, the Claimant might be forgiven and even compensated for moving the channel one way or the other, but this does not appear to justify gross overexcavation in any area.

A further qualified concession found in the State's brief reads as follows:

From the testimony introduced in the record the Respondent would concede that the Claimant is perhaps justified in such deviations from the design as moving the center line of the channel over one way or the other as directed by the resident engineer, but only in those areas where this was done.

The Court, following the authorities of our reviewing courts, has frequently held that deviations from plans may be orally authorized by the Respondent notwithstanding contract provisions that no extras will be allowed except as ordered in writing. *Diuane Brothers Electric Co. v. State of Illinois*, 22 Ill.Ct.Cl. 546, 553; *Salomon-Watertown Co. v. Union Asbestos and Rubber Co.*, 236 Ill.App. 583; *Theis v. Suoboda*, 116 Ill.App. 20; *City of Elgin v. Joselyn*, 36 Ill.App.301, 307; *Stahelin v. Board of Education of School District No. 4, DuPage County*, 87 Ill.App.2d 28, 230 N.E.2d 465; *City of Quincy v. Sturhahn*, 18 Ill.2d 604, 165 N.E.275.

In the case at bar it is undisputed from the record that the Claimant followed the directions of the resident engineer in deviating from the design throughout the course of the excavation with the exception of approximately **300** feet (Station **0+00** to **2+40**) of this **6,500** foot project. The yardage removed outside the design in this **300** foot segment was **831.92** cubic yards.

Claimant testified that all excavation removed outside of the design limits here was replaced. However, we are giving the Respondent the benefit of this issue by reducing the claim for excavation by **\$3,702.04 (831.92** cubic yards x **\$4.45** per cubic yard).

The yardage figures accepted by the Court are taken from a booklet prepared by the Department of Transportation under the title:

**CHANNEL EXCAVATION COMPUTATIONS
ADDISON CREEK**

FR-198

(Prepared for Attorney General's office
Feb. 1975)

This document shows the total area excavated by the Claimant "Inside and Outside of Design Channel" was **15,567** cu. yds. Since it is clear to the court that the Claimant excavated in accordance with the directions of the resident engineer, Claimant is entitled to be paid for this amount of excavation work at the agreed rate of **\$4.45** per cu. yard. The above mentioned document shows that the Claimant has already been paid at said rate for **9,304** cubic yards. This and the **831.92** cu.yds. removed without authorization will be deducted in our calculation as follows:

Total amount of earth removed by the Claimant	15,567.00 cu.yd.
Less excess yardage removed without authorization of Respondent's resident engineer	-831.92
Total compensable yardage removed	14,735.08
Less yardage previously paid for by Respondent	9,304.00
Compensable yardage remaining unpaid	5,431.08

5,431.08cu.yds. x **\$4.45** per cu.yd. = **\$24,168.30** due the Claimant for yardage excavated in addition to that previously allowed.

II.

We find from the evidence, notwithstanding a very persuasive argument in Respondent's brief, that the Claimant is also entitled to damages for the extra work required due to the failure on the part of the Respondent to obtain certain rights-of-way shown on the plans and specifications prepared by the Respondent but not actually available to the contractor at the time of construction.

We believe the evidence supports Claimant's contentions that the Respondent has made the following admission of facts: **(1)** that right-of-way as shown on the plans and specifications furnished to the Claimant were not available at the time of the performance of the job; **(2)** that the unavailability of the right-of-way as shown on the plans caused damage to the Claimant and that the Respondent is liable for those damages; and **(3)** that an unstated portion of **\$2,000** which Claimant was allowed as damages for lack of right-of-way, as well as for damages resulting from it being required to work under flooding conditions, is an arbitrary figure and not related to actual damages suffered by the Claimant as a result of the lack of right-of-way being available to him.

Respondent seeks to avoid the admissions of liability on the part of the Respondent in paying Claimant an arbitrary amount for damages due to the failure of the State to provide right-of-way for the Claimant by stating that this payment constituted a compromise settlement and is therefore not evidence of admission of liability. Respondent points out that our courts encourage compromise settlements as a matter of public policy, and such compromises are not deemed to be an admission of liability.

Claimant effectively answers that a compromise settlement must necessarily be bilateral. In this case there was no agreement on the part of the Claimant to accept the arbitrary sum of \$2,000.00 in settlement of **his claim for damages because of the lack of right-of-way** or the flooding conditions, and no release was given by Claimant therefor.

Further, Respondent seeks to avoid the consequences of its admission of liability by stating that the Chief Engineer, Mr. Guillou, erroneously assumed that there was a failure to provide right-of-way. This suggestion is hardly tenable in view of the testimony of Courtney Smith, the Resident Engineer, as to the actual fact concerning lack of right-of-way, in view of the testimony of Emery Killpatrick, Chief of Operations of the Division of Waterways of the Department of Transportation of the State of Illinois, concerning the lack of right-of-way, and Claimant's Exhibit No. 8, being a memo from Killpatrick to Guillou dated March **30, 1971**, some nine months after the completion of the project by the Claimant, to the effect that there was considerable cost to the State due to adjustments with the contractor because of right-of-way given to the State and shown on the plans and not actually available to the contractor at the time of construction.

This Court has invariably held that where erroneous statements are made in specifications prepared by the State, which specifications form part of the contract, and where a contractor relied upon the specifications and is misled as a result in the performance of the contract, the State is liable for damages resulting from the erroneous statements. *Peter J. Crowley Co. v. State of Illinois*, 10 Ill.Ct.Cl. 708. The rule is restated in *Arcole Construction Co. v. State of Illinois*, 11 Ill.Ct.Cl. 423, as follows:

Where plans and specifications, forming part of contract for erection of a public improvement are prepared by State and relied on by party contracting with it for such erection, contain material misrepresentations, and such party is misled thereby, and as a result thereof is obliged, in performance of contract to do extra work, State is liable in damages for value thereof.

The dollar value of Claimant's damages for failure to have access to the said right-of-way was alleged in the complaint to be **\$20,000**. At the hearing the amount was reduced to **\$15,311.80**. In Claimant's brief the damages claimed for lack of right-of-way was further reduced to an amount we find realistic and acceptable.

The Claimant calculated the damage due by reason of being required to use only public streets and alleys from which to take excavation from the channel as being in the sum of **\$13,314.61** based upon a reduction of efficiency of **62** percent. The lack of right-of-way problem was not encountered during the first nine days. During these nine days the Claimant excavated an average amount of **837** cubic yards of dirt per day. During the period in which Claimant was deprived of right-of-way his average daily excavation was **320** cubic yards so that efficiency was impaired by **62** percent. In this area the Claimant excavated **4,171** cubic yards at additional costs to himself. Claimant therefore computes his damage proximately caused by lack of right-of-way at **\$11,499.25** [**62** percent or **\$4.45/yd** x **4,171** yards].

Since the impairment of efficiency was also present in respect to tree removal by being required to haul trees in areas not available as right-of-way, as shown on the plans, Claimant computes his damage in this regard at **\$1,915.36** [62 percent at 2.00/inch x **1,464** inches]. Thus, the total damages resulted from the lack of right-of-way is **\$13,314.61** based upon reduction of efficiency.

Although the Respondent questions Claimant's method of calculation, no evidence was introduced by the Respondent tending to show any other computation of the damage flowing from the lack of right-of-way available to the Claimant, nor was any evidence introduced tending to show that the Claimant failed to mitigate damages in any respects. The Claimant's ascertainment of damages was the best evidence available and is accepted by the court. See *Johnson v. City of Galua*, 316 Ill. 598, 147 N.E. 453; *Egan u. State*, 24 Ill.Ct.Cl. 114, 117. The sum of \$2,000 will be deducted from the total amount of the claim as having already been paid by the state. Therefore the damages are reduced to **\$11,314.61**.

111.

We find that the Respondent is *not* liable for the **\$12,961** claimed for extras by reason of the Claimant being compelled to work in flooded conditions during the performance of the contract.

The record does not support the Claimant's contention that he was given assurances relating to the water levels by the Respondent's authorized representatives. Nowhere in the contract is there to be found any reference as to the condition of the channels. This is obvious not only from an examination of the contract but from the fact that nowhere in the record was Claimant able to produce any reference in the contract to the condition of

said channels. Therefore the Claimant has not shown any negligence on the part of the State connected with the failure to have certain culverts lowered prior to the Claimant's excavation in order to lower the water levels. Claimant has failed to show sufficient proof of duty, negligence, breach or damages, and will be denied any claim based on flooded conditions of the channel.

IV.

We find that the Respondent is *not* liable for the **\$2,440.35** claimed for extra seeding and mulching of an additional **2.871** acres of land. In order to accommodate Claimant, and make a payment for items not obviously within the contract, Mr. John C. Guillou, Chief Engineer of the Division of Waterways, approved the payment of an additional **860** yards at **\$4.45** per yard rounded off to **\$3,380.00**. This approval was given in response to a letter dated September **14, 1970**, from **E. & E. Hauling** to the Division of Waterways concerning extra work performed under its contract here at issue. In Claimant's Exhibit No. **10**, Claimant listed six items in paragraph **1** through **6** for which Claimant was seeking additional compensation, including extra seeding and mulching of approximately **2.75** acres of village land. According to Claimant's Exhibit No. **9**, Mr. Guillou approved a payment of **\$3,830.00** of which **\$1,830.00**, or about half of the **\$3,660.00** requested by Claimant in its letter of September **14, 1970**, was being paid by the State to cover those claims listed by the Claimant. For the other half, we concur in Respondent's suggestion that the contractor should look to local interests for payment for additional work done at the request of various mayors and village officials.

Respondent argues, and we agree, that the contractor is asking for payment as an "extra" item for seeding, mulching and fertilizing which was not covered by the

contract and for which Claimant should not be further compensated over and above the additional payment which was approved by Mr. Guillou. Claimant concedes in its Exhibit No. 10, "I understand that, according to my contract, many of these *extras* are not permissible for payment. . . ."

V.

Respondent is liable in the sum of \$3,136.00 for tree removal as was agreed upon by the Respondent and the Claimant in a joint stipulation. This amount was not paid by the Respondent only because the appropriation had lapsed.

To summarize and recapitulate, we find that Claimant is entitled to an award as follows:

I. For yardage of excavation in addition to that allowed: 5,431.08 yards at \$4.45 a yard	\$24,168.30
II. For damages sustained by the Claimant as a result of State's failure to provide right-of-way (after deducting \$2,000.00 already paid)	11,314.61
III. For extra expenses claimed as a result of flooding	None
IV. For extra expenses claimed for additional seeding and mulching	None
V. For tree removal as agreed by the parties in a joint stipulation	3,136.00
TOTAL	\$38,618.91

The Claimant is hereby awarded compensation for additional contractual services performed in the total sum of Thirty-Eight Thousand Six Hundred Eighteen and 91/100 Dollars, (\$38,618.91).

(No. 6209—Claimant awarded \$78,979.67.)

**DONALD S. CAPLAN and PERE MARQUETTE SKI CORPORATION,
Claimant, vs. STATE OF ILLINOIS, Respondent.**

Opinion filed February 14, 1977.

CHARLES H. DELANO, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACT—damages. Where evidence indicates State breached lease agreement due to ecological concerns and potential liability under federal statutes, and where evidence indicated State was willing to accept damages arising from breach, liability will arise.

HOLDERMAN, J.

Claimants on July **19, 1971**, filed with this Court a claim for alleged damages resulting from the cancellation of a lease between Donald S. Caplan and the State of Illinois entered into under date of October **1, 1968**. The lease granted Claimant Caplan the right to construct a ski lift in Pere Marquette State Park at a site known as Williams Hollow. Throughout the proceedings and in this opinion, this particular site is referred to as Site **1**. The lease was to run from January **1, 1969**, through December **31, 1993**. The lessee, referred to in the lease as Concessionaire, was to provide certain improvements, including one chair lift, parking lot, warming house, day lodge with restaurant facility and all facilities necessary to operate a ski area. It was agreed that the Concessionaire was to have the chair lift in operation by January **1, 1971**.

After the lease was executed, Claimant Caplan formed a corporation known as Pere Marquette Ski Corporation which succeeded to the lessee's rights and proceeded to lay plans for the ski area, including making a profile of the land terrain, arranging for the construction of a chair lift in France by the Pomalift Company specifically for the profile of the slope at Site **1**. Also, the State cleared trees at Site **1**.

On May **13, 1969**, the State, through the Department of Conservation, wrote the Claimant a letter re-

questing that Claimant discontinue action in construction of this chair lift. The letter requested a 30-day discontinuance of any construction.

With the letter, the State enclosed a letter signed by Paul Kilburn and John Wanamaker of the Biology Department of Principia College at Elsah, Illinois. The substance of the letter was that the construction of a ski lift at Site 1 would be a detriment in that it might spell the doom of the bald eagles. It pointed out that there were over 60 of these birds who roosted there through the winter. It was contended that the ravine selected for the ski development was a major roosting area for the bald eagles. They recommended further construction of the ski area should not be allowed. As a consequence, the chair lift went into storage.

On June 9, 1969, the State, through the Department of Conservation, wrote Claimant again and stated that Claimant was not to start any construction or erection work and to keep the equipment crated. The impression left by the letter was that the State was concerned with the public safety involved and no mention was made of any detriment to bald eagles.

On July 3, 1969, the Director of the Department of Conservation wrote Claimant on behalf of the State declaring that the lease was null and void and of no effect, contending that the act of the Department was *ultra vires*.

Thereafter, the parties negotiated an amended lease which called for construction of a ski area five miles east of Site 1. This new site is referred to in the proceedings as Site 2. The new lease specifically reserved to Claimant all rights and causes of action occasioned by the denial of the use of land under the original contract. The new lease was dated October 8, 1970, and contained the following language:

5. It is further agreed that the Concessionaire, by agreeing to substitute the tract of land herein described, and surrendering his right to use the land described in the lease agreement, does not waive **or** release any and all claims **or** causes of action occasioned by the State having denied him the **use** of the land originally described in said Lease.

6. It is further agreed that the substitution of the real estate herein provided for is, and was, made for the benefit, and at the insistence and request of the State of Illinois, Department of Conservation, and not **for** any purpose of the Concessionaire.

Claimant contends that at Site **2** it encountered problems not present at Site **1**. He states that there was no road into the area; no parking facilities; no intermediate slope; water was nearly a mile away; three buildings on the grounds were deteriorating; it was **3/4** of a mile from the highway and five miles from the heart of the peak where the people would be; that the chair lift had to be redesigned for the new slope. In the complaint filed, Claimant demanded an award in the amount of **\$225,855.50** and submitted a detailed bill of particulars.

On August **25, 1971**, there was filed in the record a letter from the Department of Conservation to the Attorney General which was signed by the Director of the Department. The letter was in the form of an answer to the complaint admitting the substance of the allegations, but pleading ignorance as to the amount of compensation, if any, to which Claimant was entitled.

On June **12, 1972**, the State filed a Motion to Dismiss contending that the original lease would violate Title **16**, Section **668** of the United States Code and was, therefore, void. The Motion to Dismiss was previously denied by this Court. The argument in the Motion is the gist of the State's case for damages.

Title **16**, Section **668** of the United States Code provides as follows:

Whoever, within the United States or any place subject to the jurisdiction thereof, without being permitted to do so as provided in sections 668-668d of

this title, shall take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner, any bald eagle commonly known as the American eagle, or any golden eagle, alive or dead, or any part, nest or egg thereof of the foregoing eagles, shall be fined not more than \$500 or imprisoned not more than six months, or both; Provided, That nothing in said sections shall be construed to prohibit possession or transportation of any bald eagle, alive or dead, or any part, nest or egg thereof, lawfully taken prior to June 8, 1940, and that nothing in said sections shall be construed to prohibit possession or transportation of any golden eagle, alive or dead, or any part, nest or egg thereof, lawfully taken prior to the addition to said sections of the provisions relating to preservation of the golden eagle. As amended Oct. 24, 1962, Publ. L. 87-884, 76 Stat. 1246.

As used in sections 668-668d of this title "whoever" includes also associations, partnerships, and corporations; "take" includes also pursue, shoot at, wound, kill, capture, trap, collect, or otherwise willfully molest or disturb; "transport" includes also ship, convey, carry, or transport by any means whatever, and deliver or receive or cause to be delivered or received for such shipment, conveyance, carriage or transportation. June 8, 1940, c 278, Section 4, 54 Stat. 251.

It is a theory of the State, as disclosed by the arguments made, that the building of a ski lift would be a willful disturbance of the bald eagles and that such disturbance is prohibited by Title 16, U.S.C.A.; that an agreement to do anything which is forbidden by a valid statute is void whether the forbidden act is *malum prohibitum* or *malum per se*. It is argued that the contract must be declared void, as it was against public policy since no person may lawfully do that which has a tendency to be injurious to the public or against the public good. The State refers to *Illinois Law and Practice*, Contracts, Ch. 7, §151, 152, 153, 191, 196, and 198.

The Claimant contends that the Respondent is prohibited from raising the issue of public policy since such issue was not joined by the pleadings. This Court has previously entered an order to the effect that the question of public policy has been put in issue by Respondent's Motion to Dismiss. See Order of May 19, 1975.

Claimant urges that Title 16, Section 668 of the United States Code does not apply to the land use

contemplated by the Claimant and further takes the position that even if it does apply, the State has failed to sustain its burden of proof that the proposed construction at Site 1 of a ski lift would “molest or disturb” the roosting of the bald eagles. This position points up the fundamental issue underlying the case before this Court insofar as liability is concerned.

It is clear that at the time the State terminated the lease it was acting on recommendation of outside sources, which recommendations were in the nature of an appeal to stop the construction since it was known that bald eagles roost in the area in the winter months. At the time of the lease termination, the State did not have strong evidence that the construction of the ski lift would necessarily “disturb” the roosting of the eagles. Apparently the State felt it did not wish to take the chance to find out and decided not to risk possible disturbance. This may well have been a judicious thing to do but does not determine the rights flowing therefrom.

The Claimant argues that Title 16 does not, by its terms, prohibit a lawful use of land whenever it appears that eagles may indirectly be disturbed, and that members of Congress, according to the committee reports, were not concerned with indirect disturbance but rather a direct and immediate threat by hunters and egg collectors. Claimant’s position is fairly well taken in this regard. However, we do not think it necessary to base a decision on that interpretation of Title 16. We prefer to make our determination on whether or not the State has proved by competent evidence that the ski lift would, in fact, make a disturbance to the bald eagle to the extent and in a manner which Title 16 prohibits.

The record contains an evidentiary deposition of Terrence N. Ingram. Mr. Ingram had been certified as a

naturalist by the State of Wisconsin. He was president of Apple Valley Environmental Association and a director for Environmental Workshop in Wisconsin and Canada; also a director of the Illinois Audubon Society. He testified that in general eagles have several roosts. They will have roosts on a river bottom, that is, where there are large trees surrounded by larger ones which act as a buffer zone. This they use in mild weather. But when the weather is more severe, they will go into a valley to roost to get out of the wind.

Mr. Ingram testified he visited Site 1 in May of **1970**. This was at a time there were no eagles roosting. He said he was the one responsible for the Director of the Department of Conservation negating the contract. Note, however, that the State cancelled the lease in June, **1969**, almost a year before Mr. Ingram visited this Site.

He testified that during severe weather eagles have to have a roost in a valley rather than a river roost. On a river roost, the eagles have to expend an extra amount of energy to keep the body temperature up. With the loss of body temperature, they have to go into the body fat which has DDT in it. The result is that using that fat, there may be enough poison to go to the brain and kill them, or it might affect reproduction. By going to the valleys, they are not exposed to that stress. Any disturbance of their roosting in the valley would cause them to fly out. Any person walking within a quarter of a mile would cause such a disturbance.

He stated that if a ski lift had gone in on Site 1, the birds would not be using the valley as a roost. When asked, however, how that would affect the eagles as to population mortality, he replied that he didn't know how many valleys there were and that a Dr. Wanamaker would be better to testify to that.

When asked about the decline of the eagles, Mr. Ingram stated he didn't know what the reasons were. He didn't have any facts and admitted that, with regard to saving birds, all he would be testifying to would be speculation.

The testimony of John Wanamaker is also in the record in the form of an evidentiary deposition. Dr. Wanamaker was a professor of Biology at Principia College, Elmhurst, Illinois. He had a doctorate from Cornell University; a masters in ornithology; was a student of conservation; and had written a number of articles for various nature magazines, principally in the area of conservation and the conservation of wild life. The campus of Principia is about **18** miles from Marquette Park lodge.

Dr. Wanamaker testified that they had a winter study dating back to **1941** involving the feeding and roosting habits of the eagles in the Williams Canyon, the Site **1** area. He stated that he had seen eagles roosting in the Williams Hollow every year from the time they were first shown to him as a student at the college back in **1939**. He stated that eagles use the roosting area during off feeding, or night time, and usually one species; that in case of migratory species, the same area would be used annually; that he had observed at the most **100** eagles roosting in the area of Site **1**.

When asked if there were other bird roosts in that general area, he stated that there was one small roost that he knew of; that Site **1** location was the only large roosting area of a permanent winter nature that he knew of. He was asked whether or not he had an opinion as to what the effect the construction of the ski lift and skiing activities would have been on eagles using the roost area at Site **1**. He replied that a disturbance of this

area would force the birds to abandon that particular eagle roost and that the birds would scatter and this would be the end of the flock. On cross examination, however, Dr. Wanamaker admitted that there was one other equally suitable hollow for roosting in the area of Site 1. He described the roosting area as one where there were large trees with large limbs to support their weight without the interference of smaller branches so they could have easy access in and out and be protected from the winds during the cold winter. He also testified that insecticides, herbicides, and public shooting were the biggest dangers to eagles.

He further said he agreed that as far as the effect of a loss of a roosting site was concerned, there was no scientific evidence as to what that would have on a **flock** of eagles. The following questions and answers were asked:

Q. Now Doctor, with respect to a roost, what is the best way to determine what would happen if eagles were to lose a particular roost, if you know?

A. Yeah, if the roosts were to be a loss such as in this case here, I think the most effective way would be simply we do have enough people making observations along the Mississippi to be able to judge over a period of time what happened to the very number of birds and I think that would give us the information (sic). That's about the only way I could concede to do it.

Also, the following:

Q. But with respect to the eagles, from any scientific basis the only concrete statements I think that can scientifically be made is that the removal of the roost would cause them to move from Williams Hollow?

A. I'm just —

Q. Isn't that correct?

A. I would disagree with that statement. I'd modify it.

Q. How would you modify it, Doctor?

A. I would say that we don't know what the effect of removal would have on the birds. I don't think you have any basis for saying we do. I wish we did.

Q. And I gather from the material that I've read and from your testimony here today that that is the situation with respect not only to yourself but all experts in this field?

A. (Nodding in the affirmative.)

Q. You'll have to answer, she can't mark down a nod, Doctor.

A. Yes, yes.

It appears from the state of the record that the State cancelled the lease based on the suggestion of parties interested in the bald eagle. Thereafter, it persuaded the Claimant to accept a new area but permitted Claimant to include a clause in the amended lease reserving whatever rights he had to damages arising out of the cancellation. The record indicates that the State felt it worthwhile to cancel the lease even if it were liable for damages.

We have no quarrel with the attitude of the State, but the Claimant's rights cannot be obliterated based on speculative evidence. Nor **do** we have quarrel with the witnesses Wanamaker and Ingram who apparently are dedicated to taking all precautionary measures to protect the American eagle and trying to safeguard the eagle from any possible disturbance. It cannot be said,

however, that the testimony satisfactorily meets the burden of proof on the State. It could well be that the ski lift operation would disturb the roosting habits of the bald eagle in the area of Site 1 in Pere Marquette Park. It could well be that this disturbance would have an effect on the flock. The proof, however, is speculative and insufficient in this regard to deny Claimant rights to damages. It would be just as appropriate, from the legal proof here, to prohibit the use of insecticides and herbicides in any area known to furnish eagles their source of food.

It may well have been judicious for the State to cancel the lease as a matter of policy even lacking the clear right to do so. Our holding, however, is that the Claimant is entitled to recover.

The damages must be limited to those we believe to be directly arising out of the cancellation of Site 1 and not include extra expenditures attributable to obtaining and preparation of Site 2. Site 2 was accepted voluntarily by Claimant and he must have known, or at least is presumed to have known, of the additional expenses required at Site 2 over Site 1. He voluntarily undertook these expenses when he entered into the new lease.

We are, therefore, entering judgment for the Claimant for certain items of damages as appear in the record.

Claimant has itemized in particular his claimed damages and introduced evidence in support of each item. He made the following expenditures and claims, and they are appropriate items of damages for which he should be compensated.

The items of expenditure are shown below and our determination is indicated after each item.

Item 1. Expenditure for feasibility studies in the amount of **\$3,693.49** is hereby allowed. This involved a preliminary study of the area and determination of the compatability of the slopes for skiing.

Item 2. Engineering work at Site **1** in the amount of **\$6,820.00** is hereby allowed.

Item 3. Expenses of travel of Claimant in connection with the original lease in the amount of **\$5,667.42** are allowed.

Item 4. Personal expenses of Claimant, such as phone calls and so forth relative to Site **1** in the amount of **\$435.96** are allowed.

Item 5. Legal expenses of Claimant relating to negotiating and drafting original lease in the amount of \$800.00 are allowed.

Item 6. Legal expenses incurred in the amount of **\$2,809.45** in negotiating for the amended lease are not allowed.

Item 7. Personal expenses in connection with Site **2**, such as telephone calls, in the amount of **\$704.35** are not allowed.

Item 8. Depreciation in the amount of \$8,500.00 for one year is allowed.

Item 9. Salaries for area manager and president of the corporation for a period of one year, April, **1969**, to April, **1970**, in the amount of **\$22,500.00** are allowed.

Item 10. Storage of ski lift due to shut down of construction in the amount of **\$1,760.00** is allowed.

Item 11. Interest on Harron Engineering Company unpaid bill in the amount of **\$1,683.00** is not allowed.

Item 12. Additional costs due to delay in construction in the amount of **\$7,742.36** are not allowed.

Item 13. Estimated profits for one year lay off in the amount of **\$48,000** are not allowed as they are too speculative.

Item 14. Additional costs to provide water at Site 2 in the amount of **\$29,678.00** are not allowed.

Item 15. Building tower at new site in the amount of **\$27,353.00** is not allowed.

Item 16. Adjusting ski lift equipment to accommodate new site in the amount of **\$17,842.36** is allowed. This item appears to be expenses incurred directly in connection with mitigation of damages.

Item 17. Additional costs for engineering, surveying and consultant work at Site 2 in the amount of **\$7,595.00** are not allowed.

Item 18. Additional costs for erecting the ski lift at Site 2 over Site 1 in the amount of **\$8,118.98** are allowed. This is similar to the item of making the necessary changes in the ski lift.

Item 19. Alterations of the chair lift to fit new profile in the amount of **\$2,841.46** is allowed.

Item 20. Additional excavational costs for beginner's slope and parking lot at Site 2 in the amount of **\$64,650.00** are not allowed.

Item 21. Legal fees negotiating for new lease at Site 2 in the amount of \$1,500.00 are not allowed.

SUMMARY

We are, therefore, awarding a total of **\$78,979.67** to Claimant as shown below:

Item 1	\$3,693.49
Item 2	6,820.00
Item 3	5,667.42
Item 4	435.96

Item 5	800.00
Item 8	8,500.00
Item 9	22,500.00
Item 10	1,760.00
Item 16	17,842.36
Item 18	8,118.98
Item 19	2,841.46
TOTAL	\$78,979.67

Judgment for Claimant in the amount of Seventy-Eight Thousand Nine Hundred Seventy-Nine and 67/100 Dollars (\$78,979.67) is hereby entered.

(No. 6302—Claim denied.)

MICHAEL J. McDERMOTT COMPANY, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed December 2, 1976.

JAMES M. REDDING, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—existence. Recovery, if it were to be sustained, must be founded upon the existence of a contract, express or implied. There must have been a meeting of the minds by these parties.

SAME—evidence. Where parties dealt with figures regarding loss of efficiency of workers to be employed under accelerated work schedules in a mere preliminary way, figures were not binding on the parties.

BURKS, J.

The claim presented here is based on a contract and seeks to recover additional compensation allegedly owing on a construction project due to “loss of efficiency.” Respondent filed a counterclaim seeking recoupment on Claimant’s alleged failure to meet construction schedules.

The Claimant, Michael J. McDermott & Company, is an Illinois corporation engaged in the business of contracting for labor and materials as a general contrac-

tor. On or about April 23, 1970, the Respondent, State of Illinois, through its Department of Public Works and Buildings, Division of Highways, let bids for reconstructing the superstructure of a five-span bridge for Torrence Avenue over the Little Calumet River in the City of Chicago.

On May 18, 1970, the Respondent awarded the contract for this work to the Claimant. The formal contract was executed on May 27, 1970. On the same day, and subsequently at the State's request, meetings were held to discuss the possibility of expediting the work to alleviate adverse effects on nearby industrial developments. Commencement of work was already delayed because of a cement masons' strike.

The Claimant prepared a detailed recapitulation of cost for an accelerated schedule and submitted it to the State on June 3, 1970. A disputed issue of fact exists as to exactly what that figure was. Both sides agree that an estimate of \$41,704.00 was submitted for costs including premium time. In addition, Claimant alleges it included a figure for "loss of efficiency factor" of \$21,317.00 for a total of \$63,021.00. In simplest terms, this "loss of efficiency factor" relates to the less than normal level of productivity supposedly exhibited by a worker facing a consistent schedule of overtime work.

At another meeting on July 10th a new work schedule was set consisting of five 10-hour days and one 8-hour day per week. Work was to begin one week after the labor disputes were settled. Mr. Val Gaesor of the State informed Claimant's Mr. Poynton that approval for the accelerated schedule had been received; that a change order would be processed, and that Claimant would be notified by letter. The letter was issued July 16th. It called for construction beginning July 27th. The

span was to be open to traffic by October 31st, and remaining work was to be completed within 29 working days.

Work began on schedule. The Respondent, on July 31, 1970, authorized a \$60,000.00 addition to the contract which was received by the Claimant on August 25, 1970. The construction fell behind schedule early in October, and the roadway was not open to traffic until November 6, 1970. Final work was completed on May, 1971. This, according to project reports, was 25-1/4 working days subsequent to the bridge opening.

The recovery claimed in this case, if it were to be sustained, must be founded upon the existence of a contract, express or implied. There must have been a meeting of the minds by these parties. The question is whether the Respondent expressly or impliedly agreed to pay the Claimant for the "loss of efficiency factor."

In its argument, Claimant refers to its cost recapitulation of June 3, 1970, as an offer which was later accepted by the Respondent. This interpretation of the facts, however, runs contrary to the way the parties treated these figures. They dealt with them as estimates and not as fixed contractual terms.

The Respondent's letter of July 16, 1970, [Claimant's Exhibit 3 and part of Respondent's Exhibit 11 is phrased as an estimate for the additional non-productive premium time. The similarity to Claimant's figure is not crucial. According to the testimony of Ron Matthias, former State construction engineer and State's Exhibit 8, the State's \$60,000.00 figure included over \$58,000.00 for non-productive premium time.

The structure of this claim indicates that McDermott Construction Company, Claimant, considered the original figure as an estimate. Claimant's final bill for

the work being done on accelerated basis was **\$43,379.32** including **\$19,274.88** for “loss of efficiency factor.” This is nearly \$20,000.00 less than the original recapitulation and indicates the earlier figure was only an estimate, and final payment being dependent on the actual work done.

Finally, in deciding against this claim, the Court takes notice that there has been no showing of any loss or expenditure by the Claimant as a result of the “loss of efficiency factor.” The State’s payment to Claimant for the accelerated work schedule represents, on the record, adequate and fair compensation.

There is also no basis for Respondent’s counterclaim for recoupment. The weekly reports of the State’s engineer indicate that only **21-3/4** working days were consumed between the opening of the bridge to traffic and final completion. This figure is well within the **29** working days allowed under the supplemental contractual agreement. [Claimant’s Group Exhibit #61]

It is undisputed that the opening of the bridge to vehicular traffic did not occur until November **6, 1970**, or six days late. However, the State at that time accepted the work without objection and in fact made no objection until after the filing of this suit. Such a delay in time amounts to a waiver of the State’s right to ask for penalties, *Nibb v. Brauhn*, **24 Ill. 268**.

Therefore, this Court disallows both the claim and the counterclaim in this case.

(No. 6611—Claim denied.)

**THE ILLINOIS FEDERATION OF TEACHERS, ET AL., Claimants, us.
STATE OF ILLINOIS, Respondent.**

Opinion filed November 29, 1976.

J. DALE BERRY of KLEINMAN, CORNFIELD and FELDMAN, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

RETIREMENT PENSIONS—funding. The question of any consequential relief for pension systems that are inadequately funded by the State is one which, at this time, should be directed to the Legislature.

BURKS, J.

Since the issues ably presented in this class action were substantially the same as the issues in *Illinois Education Ass'n., et al. v. State*, 28 Ill.Ct.Cl. 379, this Court was prepared to render a similar opinion containing a declaration of Claimants' rights, as we interpreted them, but leaving the amount of any consequential relief to the discretion of the Legislature. Ill.Rev.Stat. Ch. 110, §57-1/2. In the meantime, Claimants and representatives of other teachers' pension funds obtained a review of the same issues by the Illinois Supreme Court in *People ex rel. Ill. Federation of Teachers, et al. u. Lindberg, et al.*, (1975), 60 Ill.2d 266.

The Illinois Supreme Court did not entirely agree with our opinion as to Claimants' constitutional, statutory, and contractual rights, but reached the same conclusion that the question of any consequential relief for pension systems that are inadequately funded by the State "is one which, at this time, should be directed to the legislature."

Therefore, this action in the Court of Claims must be and is hereby dismissed and closed.

(No. 6782—Claimant awarded \$2,500.00.)

NADINE ADAMS, Claimant, *us.* **STATE OF ILLINOIS**, Respondent.

Opinion filed June 14, 1977.

STIPULATION —award. Recovery will be awarded for amount properly due when stipulated between the parties.

POLOS, C. J.

This matter coming on to be heard before the Court pursuant to a joint stipulation of the parties thereto, through their respective counsel, and it appearing to the Court from said stipulation that the parties hereto have settled all matters in controversy between them on the basis of a claim of \$19,213.80, less Respondent's recoupment on its counterclaim of \$16,713.80, or a net settlement for the Claimant of \$2,500.00.

It is therefore ordered that said stipulation be and is hereby awarded as full settlement of her claim the sum of \$2,500.00;

It is further ordered that this cause be and is hereby dismissed pursuant to said stipulation.

(No. 6813—Claimant awarded \$25,000.00.)

BARBARA K. BAROTTA, Claimant, *us.* **STATE OF ILLINOIS**, Respondent.

Opinion filed December 2, 1976.

PETER F. FERRACUTI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **EDWARD L. S. ARKEMA**, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. In order to recover for negligence Claimant must show that Respondent failed to maintain a highway in a reasonably safe condition, that such failure was the proximate cause of Claimant's injuries, and that Claimant was free from contributory negligence.

SAME—evidence. Where testimony was uncontradicted that Claimant was exercising due care, evidence showed Respondent negligently allowed water seepage to continue on highway, and Claimant was injured when her car lost control after hitting water puddle, recovery will be allowed.

BURKS, J.

This is a cause of action for personal injuries brought pursuant to the provisions of §8(d) of the Court of Claims Act.

The Claimant, Barbara K. Barotta, was injured in an automobile accident which occurred on State Highway **29** between the Village of DePue and the City of Spring Valley. The complaint charges negligence on the part of the State of Illinois in maintaining Highway Route **29** at the point of the accident.

On September **30, 1970**, the Claimant, Barbara K. Barotta, was driving a **1966** Ford automobile, going west on State Highway **29** between the Village of DePue and the City of Spring Valley, Illinois. At approximately 8:30 a.m. she approached a curve in the road. Just prior to reaching the curve, she came upon a wet spot in the road. When she came in contact with the water or wet spot on the highway the front wheels of her automobile skidded on the water, causing the Claimant to lose control of her car. Her car veered into the left eastbound traffic lane and collided head-on with an automobile being driven by a Mr. Estaban Torres. There were no warnings or signs in the area of the accident indicating that the highway was wet or slippery when wet.

At the time of the accident, the Claimant was on her way to Peoria to attend classes at Bradley University. On the day of the accident, the weather was dry and clear. The last rain prior to the accident had been about one week before. Route **29** was not Claimant's normal route of travel to Peoria. She usually took Route

89 which was closed for repairs on September 30, **1970**. She had never driven over Route **29** before.

As a result of the accident, Claimant sustained severe injury to her right ankle, reduced sight in the left eye, a broken nose, bruised ribs and a broken tendon in her finger. She incurred medical bills totalling **\$6,154.92**, and lost some earnings. The injury to her ankle will ultimately require an ankle fusion operation which is likely to result in a permanent limp.

The evidence in this case strongly supports a finding of negligence in the State's maintaining the area of the highway where Claimant's accident occurred.

Claimant's uncontradicted testimony, as abstracted, is as follows:

I had never taken Route 29 to go to Peoria before, I was heading west on Route 29 at the time of the accident and as I got to the top of the hill and started down, I saw the first patch of water. I thought to myself, "what is water doing there?" It had not rained for a week. I started slowing down when I saw the first patch of water and when I hit the first patch and then hit the second patch I lost control of the car. It was as if the car was on glass, and I had no control. There were two patches of water about 10 or 12 feet apart. In between the two patches of water the pavement was damp. As I approached the first patch of water my approximate speed was about **35** to **40** miles per hour. There are no posted speed limit signs on that road to my knowledge, going west. I slowed down to between **30** and **35** miles per hour, and that is when I came upon the first little patch of water. After that, the car was like on glass. There were no cars in front of me. I never noticed Mr. Torres' car before I came upon this patch of water. The first time I saw his car was when we hit. It is a blind curve there. You can't see a car until it actually is in the curve or around the curve. At all times prior to coming upon this patch of water, I was in the westbound lane of traffic until I lost control of my car.

The water in question was chronically present because of a seepage problem. Estaban Torres, driver of the other automobile, testified as follows:

I am familiar with Route 29 between DePue and Spring Valley and have traveled it approximately once a week for the past **45** years. I have noticed this water on the road before the date of the accident and have noticed it quite often. It keeps on seeping through the road for quite a number of days, especially when we have a heavy rain. The water seeps up from under the pavement onto the pavement itself.

Lonzo Harrison, Village Marshall of the Village of DePue, testified as follows:

Claimant's Exhibit No. 2 for identification shows water on the highway. That water has been on the highway before September 30, 1970. I am familiar with Route 29 as portrayed in Claimant's Exhibit No. 2 for identification, and have traveled that road an average of five times a week for the past 14 years. I have noticed water in that spot before, and it is almost constantly there. The road is always wet there; sometimes the water is running and sometimes it is not. The pavement is cracked up at the accident scene, and on September 30, 1970, it was cracked and there had been potholes in it that the State had tried to fill up and blacktop. The State goes over the road just about every day and they patrol it and see these potholes and they try to fill it up.

In the winter it was customary to warn westbound travelers of the condition of the road by a sign that read "Beware of Ice in the Wintertime."

The curve itself was known locally as "Deadman's Curve" because of the accidents that had occurred there. It should be pointed out that there is nothing in the record to indicate that water was a factor in any of the previous accidents. Rather, such accidents would appear to have occurred because of the severity of the curve and because of the fact that it was a blind curve.

William Dummett who took the photographs introduced into evidence as Claimant's Exhibits 1, 2, 3, 4, 9, 10, and 11 testified that when he took the photographs on November 14, 1970, the roadway was damp and that a slippery moss was growing on the gutter edge of the road and some in the middle of the westbound lane.

Both Dummett and Harrison testified that the pictures taken in November accurately portrayed the condition of the highway and the water on September 30, 1970, with the exception of the fact that in September there were no leaves on the ground.

The State had actual notice of the dangerous condition. Highway maintenance men patrolled the highway

frequently and were necessarily aware of the water on the road.

The Village Board of DePue had complained to the State that the highway was dangerous, and the Department of Public Works acknowledged that Route **29** was an obsolete highway.

Short of straightening the highway there was nothing the State could do about the dangerous curve in itself. The general nature of Route **29** at the scene of the accident is shown clearly in Claimant's Exhibits **1, 2, 3, 4, 9, 10, and 11.**

However, in the opinion of this Court, the State was negligent in knowingly permitting a permanent condition of water seepage to exist at a curve that was already so dangerous that it was known to the local residents as "Deadman's Curve." The very least the State could have done was to erect and leave standing during the summer months warning signs that read "Slippery When Wet," comparable to the sign erected in the winter reading "Beware of Ice In The Wintertime." More effectively the State should have located the source of the water and eliminated it.

The Village Marshall of DePue testified that he could recall **10** accidents at the curve in the past **14** years. This is too high an accident rate for one particular curve even though **2,200** vehicles passed over the road daily. Therefore, it was incumbent upon the State to do everything it could to alleviate the dangers inherent in the curve. The State could anticipate that water on the pavement would certainly be an additional hazard.

We find that the State's negligence was the proximate cause of Claimant's accident. We accept Claimant's uncontradicted testimony that on hitting the wa-

ter, her car went out of control as if it were on glass. The negligence of the State in permitting the water to be on the road was the proximate cause of the accident since there is no evidence of any act of negligence on the part of Claimant.

Claimant was free from contributory negligence. Her uncontradicted testimony is that, upon seeing the water ahead of her, she reduced her speed to **30 to 35** miles per hour. She says she did this not by braking but by taking her foot off the accelerator. The posted speed limit was **40** miles per hour. She makes an uncontradicted, prima facie case of driving with due care for her own safety. There is no evidence in the record that she was travelling at an excessive rate of speed or that her car was in poor mechanical condition. There is nothing in the record to indicate that she was the proximate cause of the accident. Never having driven over the road before, she would not have anticipated a slippery, wet spot in the road.

Claimant's injuries are spelled out in Joint Exhibit **12** and in her testimony. She incurred **\$6,154.92** in medical expense. An award of **\$25,000** would be appropriate considering the extent, duration, and permanency of her injuries.

Respondent, in its brief, again raises the issue of whether Claimant's statutory notice was defective for failing to state correctly the location of the accident. This matter was decided by Judge Holderman in his order of April **19, 1974**, denying Respondent's motion to dismiss. Both Mr. Torres and the Village Marshall were personally familiar with the scene of the accident. They placed it at approximately **1-1/2** miles east of the city limits of the Village of DePue, as set forth in the notice. John Kopina, the Village Clerk of DePue who testified that the accident site was only **1/4** of a mile east of

DePue, testified from a map only and was never at the scene of the accident.

The preponderance of the evidence is that the site of the accident was correctly set forth in Claimant's statutory notice.

We note that *Burgener v. State of Illinois*, 25 Ill.Ct.Cl. 6, is fairly analogous although it deals with a sheet of slippery ice across a road. In the *Burgener* case the ice resulted from a permanent condition of water seepage, and Claimant's wife lost control of her car on the ice. The State had long standing knowledge that water collected at this point on the road and was held responsible for not warning travelers of the ice.

For the reasons set forth above, the Claimant is hereby awarded damages in the amount of Twenty-Five Thousand Dollars (\$25,000.00).

(No. 7031—Claimant awarded \$1,305.00.)

**CHARLES G. WINTERS, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed February 15, 1977.

ROBERT J. SHAW, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, for Respondent.

SECURITY DEPOSIT—stipulation. Claim for refund of security deposit held by the Secretary of State. Stipulation as to facts and amount of damages sustained. Award entered for \$1,305.00 based on stipulation.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

This Court finds that this claim is for the refund of a security deposit held by the Illinois Secretary of State, Safety Responsibility Unit pursuant to Illinois Vehicle Code, Ill.Rev.Stat., Ch. 95-1/2, **97-503**. An investigation of this claim by the Secretary of State determined that the amount due would have been paid in the regular course of business had the claim been presented to the proper office before the money was transferred to the General Revenue Fund. The sole reason said claim was not previously paid is due to the fact that the money was transferred to the General Revenue Fund in the State Treasury in accordance with **§7-503** of the Illinois Vehicle Code, the same having been confirmed by the Secretary of State, a copy of said report being attached to the Joint Stipulation of the parties.

It is hereby ordered that the sum of One Thousand Three Hundred Five Dollars (**\$1,305.00**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(Nos. 73-13, 73-14, 73-54, 73-457, 73-469, 74-243, and

74-244—Consolidated—Claimant awarded \$11,708.55.)

MEDLEY'S MOVERS AND VAN LINES, **Claimant**, us. STATE OF ILLINOIS, **Respondent**.

Opinion filed October 1, 1976.

ARTHUR R. WADDY, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—stipulation. Claim for services rendered to various recipients of public aid in moving or storing household goods pursuant to authorization by the Department of Public Aid. Stipulation as to facts and amount of damages sustained. Award entered for \$11,708.55, based on stipulation.

BURKS, J.

These seven consolidated claims seek payment for services allegedly rendered to various recipients of public aid in moving or storing their household goods pursuant to some type of alleged authorization by the Department of Public Aid.

The seven claims purport to cover some **404** separate moving contracts over a three-year period for which Claimant contends he was never paid for various reasons. He disputes many of the reasons stated in a detailed departmental report which was nevertheless entered into evidence by stipulation as a Joint Group Exhibit No. 1, and is accepted by the court as prima facie evidence of the facts set forth therein, in accordance with **Rule 14** of the court.

The said departmental report filed by the Respondent listed each separate moving contract alleged by the Claimant together with the amount claimed, and the amount Respondent admits was actually due the Claimant according to departmental records, as follows:

Claim No.	Amount Claimed	Amount owed per Departmental Report
73-CC-13	\$ 7,315.74	\$ 1,170.00
73-CC-14	6,536.35	1,076.25
73-cc-54	7,882.62	1,592.50
73-cc-457	8,419.74	655.00
73-CC-469	9,600.87	2,253.05
74-CC-243	7,882.62	3,230.75
74-CC-244	7,621.49	1,731.00
	Total	Total
	claimed \$55,259.43	admitted \$11,708.55

The above departmental report was submitted into evidence by stipulation as Joint Group Exhibit No. 1. The Claimant, Howard C. Medley, d/b/a Medley's Movers and Van Lines, failed to appear at the hearing and offered no evidence to further substantiate his claims in

any amount beyond that acknowledged and admitted by the Respondent.

We notice from the said report that the Department of Public Aid recommended that about three-fourths of the separate moving claims be disallowed for reasons which the Court considers good and sufficient.

On the basis of the stipulation entered into, it is the Court's opinion that there is due the Claimant in the above entitled seven consolidated cases the sum of **\$11,708.55**.

Claimant is hereby awarded the total sum of Eleven Thousand Seven Hundred Eight and 55/100 Dollars (\$11,708.55) as full payment for all services mentioned in all of these seven consolidated claims.

(No. 73-64—Claimant awarded \$9,000.00.)

**HUBERT MCCRAY, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed September 22, 1976.

PRISONERS AND INMATES—wrongful incarceration. Where Claimant was unjustly imprisoned for five years or less, award will be made for not more than \$15,000.00.

PERLIN, C. J.

This matter coming on to be heard by the Court of Claims, the following findings are hereby made:

1. Claimant has duly filed his complaint for time unjustifiably imprisoned pursuant to the Illinois Statutes governing the same.

2. Claimant was imprisoned in Menard State Penitentiary from November 12, 1969, to August 4, 1972, a total of two years, eight months and twenty-two days.

3. Claimant's conviction was reversed by order of the Illinois Appellate Court, Fifth Appellate District.

4. On August 27, 1974, Claimant received a pardon from the Governor of the State of Illinois on the grounds of innocence of the crime for which he was imprisoned.

5. Claimant, Hubert McCray, was employed at General Steel Industries in Granite City, Illinois, at the rate of \$2.70 per hour or \$118.00 per week.

6. Sec. 8(c) of the Court of Claims Act provides that awards may be granted for unjust imprisonment of five years or less, for not more than \$15,000.00

It is therefore ordered by this Court that Claimant be awarded the sum of Nine Thousand Dollars (\$9,000.00).

(No. 73-65—Claimant awarded \$9,000.)

**DARREL DILLARD, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed September 22, 1976.

PRISONERS AND INMATES—Wrongful incarceration. Where Claimant was unjustly imprisoned for five years or less, award will be made for not more than \$15,000.00

PERLIN, C. J.

This matter coming on to be heard by the Court of Claims, the following findings are hereby made:

1. Claimant has duly filed his complaint for time unjustifiably imprisoned pursuant to the Illinois Statutes governing the same.

2. Claimant Dillard was imprisoned at Menard State Penitentiary from November 12, 1969, until Au-

gust 8, 1972, a total of two years, eight months and twenty-five days.

3. Claimant's conviction was reversed by order of the Illinois Appellate Court, Fifth Appellate District.

4. On August 27, 1974, Claimant received a pardon from the Governor of the State of Illinois on the ground of innocence of the crime for which he was imprisoned.

5. Claimant was employed at the Performing Arts Training Center and Pudgery's Tavern in East St. Louis, Illinois, at the time of the aforementioned imprisonment at a rate of \$360.00 per month.

6. Sec. 8(c) of the Court of Claims Act provides that awards may be granted for unjust imprisonment of five years or less, for not more than \$15,000.00.

It is therefore ordered by this Court that Claimant be awarded the sum of Nine Thousand Dollars (\$9,000.00).

(No. 73-291 — Claimant awarded \$40,000.00.)

DR. GUILIO BRUNI, Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 25, 1977.

CONTRACTS—evidence. Where evidence indicated Claimant performed services pursuant to a valid contract with the Department of Public Aid during a period when he was properly licensed to render such services, award will be allowed.

SPIVACK, J.

Claimant seeks to recover the sum of \$61,158.00 for medical services rendered to some 2,500 Public Aid recipients from December, 1970, to January, 1972. Respondent has counterclaimed in the sum of \$10,202.50, allegedly paid Claimant in error for services rendered

other patients within the same period. Respondent defends principally on the grounds that in March, **1965**, Claimant was suspended from the roster of physicians approved to participate in the Public Aid program. Respondent likewise albeit less vigorously defends on the grounds that the Illinois Department of Registration and Education had revoked Claimant's license to practice medicine in the State of Illinois.

Hearings were conducted before Commissioner Griffin on June **14** and July **16, 1974**. The testimony introduced was that of Claimant, Thelma Trice, and J. M. Kilbreth, employees of the Department of Public Aid. Additionally, various documents were received in evidence and are part of the record.

The following facts were established by Commissioner Griffin and duly reported to the Court:

Claimant was licensed by the State of Illinois as a physician in **1953**. In **1960**, he applied and was accepted as a physician eligible to participate in the Public Aid program. In **1965**, he was convicted of a non-medical related felony, was incarcerated in a Federal penal institution, and paroled in **1969**. In **1970**, he recommenced his medical practice, treated Public Aid patients, and in fact received the sum of **\$10,202.50** for services rendered some of these patients during the first three months of the period in question.

In the early part of **1970**, the Illinois Department of Registration and Education revoked Claimant's medical license on the grounds of his prior conviction of a felony. This revocation was reversed by the Circuit Court of Cook County in May, **1970**. An appeal was taken and the Appellate Court reversed the trial court in **1972**. Subsequently, the Illinois Supreme Court affirmed the Appellate Court's decision, and an appeal of that ruling

is presently pending before the United States Supreme Court.

In March of **1965**, Claimant was suspended from participation in the medical aid program, following a series of departmental proceedings. It is clear that Claimant was not notified of these proceedings, had no knowledge of their pendency, and never received notice that he had been suspended from participation in the program.

The evidence further disclosed that there is no question raised as to Claimant's competency in or about the treatment of his patients or the legitimacy or accuracy of the bills rendered. It is likewise clear however, that the custom followed by the Department and accepted by the Claimant was that most bills were reduced by about one third inasmuch as Claimant's customary charges were higher than the maximum prescribed by the Department.

It is evident that there was an express contract entered into between the Claimant and the Department of Public Aid in 1960, and although the contract is terminable at will by either party with or without cause, in order for any such termination to become effective, justice and reason require that actual notice thereof be given to the party adversely affected by such unilateral termination. This did not occur in the instant case. Moreover, the existence of the contract as late as **1970**, some five years after the attempted unilateral termination, was affirmed by the Department of Public Aid by its payment of some \$10,000.00 to Claimant. In view of our conclusion that the contract was in full force and effect during the period when Claimant performed the services for which he seeks compensation, it is not necessary to consider the legal issues raised by the

pleadings and arguments concerning estoppel, quantum meruit, privity, and the like.

The only question remaining is whether or not the Claimant was validly licensed as a physician during the period of time that he rendered the services for which he now seeks recompense. We find that he was so licensed until at least **1972**, inasmuch as the Circuit Court of Cook County did by its order of May, **1970**, declare Claimant to be licensed and such order remained in full force and effect until reversed by the Illinois Appellate Court in **1972**.

Having thus determined that Claimant performed the services pursuant to a valid contract with the Department of Public Aid during a period when he was properly licensed to render such services, it remains to determine the fair amount due him.

The aggregate of the billings herein claimed is **\$61,158.00**. However, the evidence discloses that customarily prior billings of Claimant were reduced by one third to reflect the difference between Claimant's customary charges and the maximums prescribed by Public Aid. Claimant made no objections to these reductions and thus had agreed to this contractual modification. Applying the same standards to the amounts now due, the Court finds that the total amount now due Claimant is **\$40,000.00**. Accordingly, Claimant, Dr. Guilio Bruni, is therefore awarded the sum of Forty Thousand Dollars (\$40,000.00).

(No. 73-330—Claim denied.)

RICHARD MISLICH, JR., A minor, by Richard Mislich, Sr.,
Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 8, 1976.

BOODELL, SEARS, SUGURE, GIAMBALVO & CROWLEY,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD
ARKEMA, JR., Assistant Attorney General, for Respon-
dent.

LIABILITY OF ONE IN CONTROL OF PREMISES TO CHILDREN—elements. That a condition dangerous to children existed on the premises; that the defendant failed to correct the dangerous condition or to protect children from the danger; that the dangerous condition caused the injury; and that damages were sustained as a result thereof.

SAME—evidence. Where evidence indicated eight year old boy fell from one of the underside “T” beams of a bridge crossing on Interstate highway, no defective structure or dangerous condition existed.

HOLDERMAN, J.

Claimant’s action arises out of a suit filed on May 2, 1973, by Richard Mislich, Sr. on behalf of Richard Mislich, Jr., a minor, for injuries allegedly sustained by him on August 23, 1967.

On August 23, 1967, Claimant fell from one of the underside “T” beams of the Crawford Avenue bridge while crawling between such beams.

The bridge in question was an overpass over Interstate 80, a transcontinental federal highway. The bridge was in substantially the same condition on the date of the injury as it was when accepted by the Respondent, State of Illinois, on April 11, 1967.

Claimant alleges that the structure was a dangerous and attractive nuisance to children. The Claimant also alleges that the Respondent knew this area was attractive to children and should have taken precautions to keep them off said property so they would not suffer any injuries.

The record is clear that on the day the accident allegedly occurred the actual road construction was at

least one-quarter mile away from the bridge from where the Claimant fell and that there was no actual work being done on the bridge itself.

The “I” beams from which the Claimant fell were the standard “I” beams used to support bridges and structures of this type.

The record discloses that Claimant was an eight year old boy at the time of the alleged accident and was in the area with several other children. Claimant testified to his initial fear of crawling onto the beam and added that he was “a little bit (scared),” when referring to truck vibrations on the beams as they went across the bridge. Several other children called to testify stated that they recognized the area as a dangerous area.

The victim lived approximately three blocks from the scene in question, and the record discloses that the work on Interstate 80 had been going on for a considerable period of time.

The record is devoid as to what the victim’s parents had done, if anything, to warn the boy to stay away from the construction area.

The Respondent had not constructed a fence along the new Interstate 80 nor did they have a watchman in the area.

Claimant has stressed the so-called “attractive nuisance” cases, namely *Kahn v. Burton*, 5 Ill.2d 614, 126 N.E.2d 836, and *Trobiani v. Racienda*, 95 Ill.App.2d 228, 238 N.E.2d 177. The doctrine relied upon is briefly as follows:

Where the owner or person in possession knows, or should know, that young children habitually frequent the vicinity of a defective structure or dangerous agency existing on the land, which is likely to cause injury to them because they, by reason of their immaturity, are incapable of appreciating the risk involved, and where the expense or inconvenience of remedying the condition is slight compared to the risk to the children. In such cases there is

a duty upon the owner or other person in possession and control of the premises to exercise due care to remedy the condition or otherwise protect the children from injury resulting from it. (Wagner v. *Kepler*, 411 Ill. 368). The element of attraction is significant only in so far as it indicates that the trespass should be anticipated, the true basis of liability being the foreseeability of harm to the child. *Kahn supra* at 625.

(1)The occupier knows that young children frequent the vicinity;

(2) There is a defective structure or dangerous agency present on the land;

(3) That structure or agency is likely to cause injury because of the child's inability to appreciate the risk; and

(4)The expense of remedying the situation is slight. *Trobiani supra* at 179.

The Claimant's position is that the structure from which the boy fell was defective and such an attraction as to attract children to the area and that the expense of remedying the situation would have been slight.

The Respondent's position is that this was an ordinary bridge constructed at frequent intervals to allow traffic to pass over Interstate 80, that there was nothing unusual about it, and there was nothing in particular to attract young people to it. Respondent also takes the position that there was nothing defective about the structure and that it was the standard structure used on Interstate 80 wherever overpasses are used which in cities can be every few blocks.

The State also takes the position that they did not know children would be attracted to the area in view of the fact that the work itself was a long distance from the site where the accident occurred which would be the normal site of the attraction.

In the *Kahn* case cited by the Claimant, the Court used the following language:

The test in the case at bar is whether the lumber company in the exercise of ordinary care could reasonably have anticipated the likelihood that children would climb onto the lumber and would be injured *if it were not* securely *piled*. (Emphasis supplied). *Kahn supra* at 622.

Justice Stamos placed much emphasis upon the last cited quote and specifically the words “if it were not securely piled.” He found that the liability in *Kahn* was based upon the fact that the lumber “was not securely piled,” constituting a defective structure or dangerous agency. In the *Sydenstricker* case, at 18, the Court stated:

The risk that children may climb and fall from a non-defective stationary object simply because children might be expected to climb upon it when the object is lawfully located for an appropriate and useful purpose is not an “unreasonable risk” so as to produce liability within the meaning of *Kahn*. Another requirement for liability under *Kahn* is that a child because of his age and immaturity be incapable of appreciating the risk involved. The risk in climbing is simple and obvious to a child of plaintiffs age (9) and experience.

The facts in the instant litigation reflect that an essential element of liability is absent, since the injury was not the result of any defective structure or dangerous agency inherent in this parked railroad tank car.

In reference to the *Trobiani* case, the *Sydenstricker* Court stated:

Plaintiff cites the *Trobiani* case in support of his argument, but in *Trobiani*, the plaintiff child incurred his injuries when he fell from a ladder, in a building under construction, and into an open stairwell. The court held that a ladder over an open stairwell in a building under construction constituted a dangerous condition to a minor plaintiff. *Sydenstricker*, at 18.

In *Sydenstricker*, as well as in the instant case, there is a definite lack of a defective structure or dangerous condition essential to impose liability under the “attractive nuisance” doctrine. (R. pp. 124, 182, (R.III) pp. 10, 12).

Claimant’s argument that this was a defective structure is not supported by any of the facts. As stated before, it was a typical structure supporting an overpass over a highway. There is nothing in the record to indicate that any part of the structure, including the “I” beams from which the victim fell, was defective in any manner, shape or form.

It is also the Respondent’s contention that a non-

defective roadway, plus a non-defective, common, federally approved interstate bridge, does not constitute a “dangerous agency.”

This Court has repeatedly held that before a recovery can be made, they must prove by a preponderance of the evidence that:

(1)the injuries were proximately caused by the negligence of the Respondent; and

(2) Claimant was in the exercise of due care and caution for his own safety.

The boy who was injured was eight years of age at the time of the accident. This Court and the Courts of Illinois have repeatedly held that the Illinois law requires a minor over the age of seven years to exercise that degree of care which a reasonably careful person of the same age, capacity, intelligence and experience would exercise under the same or similar circumstances. See *Simmons v. State of Illinois*, 26 Ill.Ct.Cl. 351.

Claimant also alleges that this accident could have been prevented at slight cost by the construction of a fence. In view of the fact that Interstate 80 is a trans-continental highway, it would appear that the construction of a fence, which in itself might be a challenge to children, would not have prevented the accident in question.

Attention is called to the fact that at the time of the accident this was an unopened roadway. The *Sydenstricker* case touched upon this very element using the following language:

Climbing is an expected adventure in the life of young children. It is difficult, if not impossible, for one to guard against children falling as it is to preclude their climbing. A device, structure or other object utilized to prevent or impede young people from climbing another device, structure or object has the same inherent hazard, that of the young person falling while climbing. p. 19.

In *Schilz v. Walter Kassuba, Inc.*, 27 Wis.2d 390; 134 N.W.2d 453, the Court stated:

Indeed the challenge offered by the risk of falling is probably what provides the fun. There is no suggestion of any surprising danger, such as instability of the pipes or unusual slipperiness. *Schilz*, p. 455.

It appearing that the Claimant has failed to prove the contentions in his complaint and in particular that this was a defective structure or that there was negligence on the part of the Respondent, this claim is hereby denied.

(No. 73-421—Claim denied.)

**LEXINGTON HOUSE, INC., Claimant, vs. STATE OF ILLINOIS, and
DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed November 29, 1976.

LEITER, NEWLIN, FRASER, PARKHURST & McCORD, by
JOHN C. PARKHURST, of Counsel, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*services* rendered. Where Claimant furnished additional services voluntarily and with knowledge that State department would not pay for the additional services, recovery therefor will be denied.

SAME—ratification. Approval of a program for social rehabilitation by one State department is not binding upon a different State department.

EQUITY—unjust enrichment. Court of Claims does not have jurisdiction to hear equitable claims for unjust enrichment and restitution.

BURKS, J.

This claim arises under the provisions of Section 11-13 of the Illinois Public Aid (Ill.Rev.Stat. Ch. 23, §11-13), and is a claim for payment of vendor services.

This Court has jurisdiction under §8(a) of the Court of Claims Act to hear all claims against the State founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act.

Lexington House, Inc., is a Delaware corporation, authorized to do business in Illinois, with its principal office in Peoria, Illinois. It operates a facility licensed by the Illinois Department of Public Health as a sheltered care home, located at 3111 W. Richards Boulevard, Peoria, Illinois, and known as Lexington House North, in which it cares for private patients and public patients, some of the latter being placed there by the Illinois Department of Mental Health and others by the Illinois Department of Public Aid.

Early in **1971**, Claimant started a social rehabilitation program at Lexington House North which was reviewed by the Department of Mental Health and approved by that Department by memorandum dated February **18, 1971**. The approval was effective as of March **1, 1971**. The amount of the extra charge for this special service was **\$6.00** per month per person.

The Peoria office of the Department of Public Aid received a copy of the Department of Mental Health's approval of the program, and honored Claimant's billing for the additional service for the months of March and April, **1971**.

Thereafter, the Supervisor of Caseworkers in the Peoria office of the Department of Public Aid, in a review of payments being made to vendors in the Peoria area by the Illinois Department of Public Aid, discovered that her departmental superiors in Springfield

had not yet approved Lexington House North for a social rehabilitation program nor authorized the payment of the additional monthly fee.

She thereupon notified Claimant by letter dated June **11, 1971**, that the Department of Public Aid would not pay the extra \$6.00 fee for mental and social rehabilitation beginning with the month of May, **1971**.

In accordance with the directions contained in the letter, Claimant omitted the \$6.00 increment from its billings for Public Aid patients for the month of May, **1971**, and all months thereafter while its employees were discussing the matter with the Springfield office of the Department of Public Aid. The Department of Mental Health at all times continued to pay the additional charge for its patients.

Finally, by memorandum dated October **18, 1972**, the Springfield office of the Department of Public Aid notified the Peoria Regional office that Claimant's social rehabilitation program had been approved retroactively to July **1, 1972**.

Claimant seeks an award from this Court for the rehabilitation program services voluntarily furnished to Department of Public Aid patients during the period May **1, 1971**, to July **1, 1972**. At **\$6.00** per month per patient this charge totals **\$7,302.00**. It should be borne in mind that Claimant furnished the additional services voluntarily with full knowledge that the Peoria office of the Department of Public Aid was refusing to approve payment for the same without approval from department officials in Springfield. The record is silent as to why Claimant did not discontinue the services to the Department of Public Aid patients. Perhaps it would have experienced practical difficulties in trying to eliminate selected patients from the program. In any

event, for whatever reason, Claimant continued to furnish these additional services to Department of Public Aid patients for a period of 14 months even though the Peoria office of the Department of Public Aid expressly notified Claimant that it would not pay the additional charge in the absence of approval from Springfield.

It is Claimant's contention that approval of the program by the Department of Mental Health was, in effect, binding on the Department of Public Aid. It is Claimant's contention that once the Department of Mental Health approved the program, the Department of Public Aid no longer had the right to review the program with respect to its own patients, but was automatically bound to accept the program and pay the additional charge.

Claimant has produced no statute or regulation showing that the approval of Claimant's social rehabilitation program by the Department of Mental Health was in any way legally binding on the Department of Public Aid. Common sense rejects such a conclusion. It is obvious that a department, acting alone, cannot obligate the budget of another department.

Additional light is shed on this matter by the procedure followed in 1970 when the Department of Public Health approved a so-called "activities" program for Lexington House North, also involving a charge of \$6.00 per patient. The Department of Public Aid issued its separate approval of the program effective December 1, 1970. There was no contention that the Department of Public Health, by unilateral action, was able to obligate the budget of the Department of Public Aid.

This Court must reject Claimant's contention that approval of Claimant's social and mental rehabilitation program by the Department of Mental Health automati-

cally bound the Department of Public Aid to participate in and pay for the program.

Claimant next argues that it is “justly entitled” to the payment of its claim. The thrust of its argument is that the Peoria Regional office of the Department of Public Aid acted “unjustly” in refusing to pay for the services without departmental approval, and that the Department acted “unjustly” in granting approval retroactive only to July **1, 1972**, rather than to May **1, 1971**. Claimant states that for this Court to reject its claim would be “inequitable and unconscionable.”

It is obvious that this Court is not a court in chancery, sometimes referred to as a court of “conscience.” This Court can only exercise the jurisdiction given to it by the legislature. The office of equity is to supply defects in the law. This Court has no such jurisdiction.

Claimant also argues that for this Court to deny its claim would result in “unjust enrichment” to the State. Here again the Court of Claims does not have the jurisdiction of courts of law to hear claims for restitution and unjust enrichment.

Finally, even if this Court had full legal and equitable jurisdiction, it would be proper to deny Claimant’s claim.

As stated in the article on *Restitution and Unjust Enrichment*, **46 Am.Jur. 100**:

Nor can one be held liable for benefits upon him against his will and efforts to prevent them. As somewhat variantly stated by some authorities, a person who officially confers a benefit on another is not entitled to restitution therefor.

The crux of the matter is that during the entire **14** month period for which Claimant seeks reimbursement for its additional services, it was not only at liberty to

discontinue such services, but continued to render them in the face of express notification that it would not be paid for such services. Had Claimant discontinued its additional services until the matter was resolved, it would have suffered no loss.

This Court is not authorized to relieve Claimant from the consequences of its own actions under these circumstances.

This claim is hereby denied.

(No. 74-12—Claim denied.)

ALBERTA MATTHEWS and ROBERT MATTHEWS, Claimants, *us*.
STATE OF ILLINOIS, and ILLINOIS NATIONAL GUARD,
Respondent.

Opinion filed June 13, 1977.

ROSENFELD, HAFRON & SHAPIRO, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; LEONARD CAHNMAN, Assistant Attorney General, for Respondent.

NATIONAL GUARD—federal mission. Where National Guard was preparing to go on a training mission pursuant to federal orders it is not performing a state function and State is not liable for its negligent acts.

SAME—burden of proof. Claimant must prove driver of National Guard truck was engaged in state business rather than acting under federal orders before State can be held liable.

HOLDERMAN, J.

Claimants, Alberta and Robert Matthews, bring this action for damages sustained as a result of an alleged vehicular collision between the Claimants' vehicle and a vehicle belonging to the Illinois National Guard. Claimants allege that on July 23, 1971, at 10:30 p.m., there was an accident on King Drive and 55th Street in Chicago, Illinois.

Claimant, Alberta Matthews, testified that her vehicle was struck by an army truck that failed to stop at a stop sign causing the damage complained of.

Claimant further alleges that her medical bill was in the amount of \$130.00, that she lost one week of work, and that considerable damage was done to the vehicle in which she and her husband were riding.

Her husband, Robert Matthews, has died since the accident occurred and was not present at the time of the hearing.

Respondent filed a Motion to Strike and Dismiss which was denied, and the matter was heard before one of the Commissioners of the Court of Claims.

Respondent raises the issue as to whether or not a driver of a National Guard truck is performing a State function since the military vehicle involved was assigned to an Illinois National Guard unit which was performing federally funded inactive duty training pursuant to 32 U.S.C. 502.

It is incumbent upon Claimant to prove that the driver of the National Guard truck was engaged in State business rather than acting under Federal orders before the State can be held liable.

The evidence is, to say the least, sketchy in regard to any involvement by the State of Illinois. The evidence in the record indicates that the Guard unit was preparing to go to Camp McCoy, Wisconsin, where they go for a period of two weeks training every year pursuant to orders of the federal government.

The Court of Claims, in the case of *Doyle McRaven vs. State of Illinois*, 28 Ill.Ct.Cl. 5, held that when the National Guard is engaged in a Federal mission the State is not responsible.

The evidence is clear that on the night in question the armory was open in preparation for the two weeks required drill at 6:00 a.m. the next morning, and that guard members were on duty that night. It is apparent that the National Guard was engaged in active duty training under 32 U.S.C. 502.

The Court concludes that the alleged tortfeasor was not an agent of the State of Illinois at the time of the accident and therefore the claim against Respondent is denied.

(No. 74-25—Claim denied.)

ALLAN C. LARSON, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed August 20, 1976.

NICHOLAS T. KITSOS, by RICHARD SERBER, of counsel,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A.
SOLL, Assistant Attorney General, for Respondent.

HIGHWAYS—burden of proof. In order for Claimant to recover for alleged property damage, he must prove by preponderance of evidence that he was free from contributory negligence; that Respondent acted or failed to act in a manner amounting to negligence; and that the negligence of the Respondent was the proximate cause of said damage.

SAME—knowledge of defect. Where Claimant failed to show Respondent had, or should have had, knowledge of alleged defect, recovery should be denied.

BURKS, J.

This claim, sounding in tort, seeks compensation for damages to Claimant's automobile from a collision with a median strip on a State highway. In prior proceedings in this cause, the Court entered an order dismissing that part of Claimant's action that pertained to personal injuries. Therefore, the remaining issues considered here relate only to Claimant's alleged property damage.

Testimony was heard from two witnesses, **Mr.** Allan C. Larson, the Claimant, and **Mr.** Joseph J. Kostur, Regional Safety Claims Administrator for the State of Illinois, Department of Transportation. The evidence also includes Claimant's two exhibits and numerous exhibits of the Respondent, photographs of the median strip, Respondent's pavement marking records, and sign shop work orders of the Department of Transportation. The parties stipulated that the scene of the alleged accident was upon a State highway.

The incident occurred on April **18, 1972**, at approximately 10:30 p.m., as the Claimant, Mr. Larson, was driving home from work in his **1968** Oldsmobile north-bound on a 4-lane highway, Busse Road, just south of its intersection with Algonquin Road. The weather was clear, the road was dry, and it was dark. The nearest lights were 400 feet away from the scene of the accident. **Mr.** Larson testified that his car hit a median strip that he described as gray in color, ten inches high, two-and-one-half feet wide; and, that as a result of the collision his car slid across the top of the median and came to a stop. Claimant testified that the presence of the median was not signaled to him by warning signs, nor did he see any yellow stripe markings painted on the median. Claimant's car was towed from the scene and subsequently sold for **\$300.00**.

Mr. Kostur testified that the Department of Transportation records indicated that the medians on Busse Road in this area had been marked with yellow paint and reflective glass beads by September **30, 1971**, seven months prior to Claimant's accident. Mr. Kostur also stated that between Illinois routes **72** and 62 (Algonquin Road), there are a total of seven median islands on Busse, marked and painted the same as the median strip in question. Although Mr. Kostur testified that

Respondent's Exhibit 7 indicated that sign erection on the median was completed on June 18, 1971, he could not specify if any signs were later replaced or repaired. Claimant's photo exhibits, taken a week after the incident, show KEEP RIGHT and black and white warning signs in place. Upon viewing Claimant's Exhibit 1, Mr. Kostur testified that the paint was badly scraped and marred but, based on his experience, the paint used on the medians should last between a year and a year and a half.

In order for Claimant to recover the alleged **property** damage, he must prove by a preponderance of the evidence that he was free from contributory negligence; that the Respondent acted or failed to act in a manner amounting to negligence; and that the negligence of the Respondent was the proximate cause of said damage.

We find that the Claimant here has failed to prove by a preponderance of the evidence that he was free from contributory negligence. The photographs in evidence show that the median in question had sufficient paint marking to indicate its presence to a driver approaching it with due care and caution for his own safety. This conclusion is further warranted by the fact that a driver traveling north on Busse Road, as was Mr. Larson, would have passed similarly marked medians which would indicate the possibility of other such medians ahead.

Moreover, there is no evidence that the Respondent had any notice, actual or constructive, of a dangerous condition needing a remedy. In light of the fact that the medians in that area of Busse Road had been painted only seven months prior to the accident, Claimant has also failed to sustain his burden of proving negligence on the part of the Respondent.

Wherefore, the Court finds that this claim must be and is hereby denied.

(No. 74-50—Claimant awarded \$600.00.)

STEPHEN McLEOD, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed August 12, 1976.

REDMAN, SHEAR, O'BRIEN & BLOOD, by MICHAEL J. O'BRIEN, of counsel, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; GEORGE A. MUSTIS, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—damages by escaped inmates. **State is liable for damages only if negligent in allowing inmate to escape from custody.**

SAME—*burden of proof.* **State is prima facie negligent where inmate is allowed to climb over institution fence without being seen.**

SAME—*contributory negligence.* **Negligence of bailee in leaving keys in car is not attributable to bailor.**

BURKS, J.

This claim for property loss and damages is brought pursuant to the provisions of the act relating to damages caused by escaped inmates of State controlled institutions. Ill.Rev.Stat., Ch. 23, 04041.

The filing of briefs having been waived, the facts in the record are summarized as follows:

On April 10, 1973, Claimant owned a 1964 Malibu Chevrolet. On that date, Claimant's wife, who was a part-time employee at the Montgomery Ward store located on the outskirts of St. Charles, drove the car to work and parked it in front of the store at approximately 5:00 p.m. According to the hearsay testimony of the Claimant, Claimant's wife left the **car** unlocked, but took the keys with her into the store. When she quit work at 9:00 p.m., the car was no longer in the parking lot.

About a week later Claimant was notified by police that the car had been found in Chicago, and that he could pick it up at a vehicle pound on the south side of Chicago.

Claimant had purchased the car in March, 1973, for \$375. During the time Claimant's car was missing it had been damaged, and the repair estimates exceeded the sum of \$375. Various items of personal property in the car at the time Claimant's wife parked it in the store parking lot were not in the car when Claimant picked it up at the pound.

The record contains a statement of one Jonathan Hill, an inmate of the State Training School for Boys at St. Charles. He testified that, in the afternoon of the day in question, he hid in the ceiling of the gymnasium. From that vantage point he watched many guards looking for him until approximately 6:00 p.m. He then escaped from the institution by climbing over the barbed wire fence surrounding the grounds. He travelled through woods and farmland until he reached the outskirts of St. Charles at about 7:00 p.m. There the inmate Hill found Claimant's car in the Montgomery Ward parking lot. According to his statement, the keys were in the ignition. He drove the car to Chicago where he abandoned it. He stated further that he had no knowledge of the personal property in the car.

Turning now to the issues, we find that a prima facie case is made as to the State's negligence in that inmate Hill was able to climb over the institution fence without being seen.

On the question as to whether the Claimant was free from contributory negligence, we take notice of Claimant's hearsay testimony that his wife did not leave the keys in the car. Inmate Hill states categorically that

the keys were in the car, and that he did not know how to start a car without its keys. Under the circumstances, this issue is irrelevant. The Claimant, as bailor of the car, is not bound by the negligence of his wife, the bailee, in leaving the keys in the car, if in fact she did so leave them. *I.L.P. Bailments* 821. Negligence of the bailee is not attributable to the bailor.

The result would be different if Claimant had personally left the keys in the car. He would be bound by his own act of contributory negligence. Under the facts as we see them, the Respondent is liable for Claimant's loss.

Claimant asks **\$816.47** in damages for repairs to the car in an estimated amount of \$508.95, plus **\$307.52** for the stolen items of personal property. Claimant testified, however, that he paid only **\$375** for the car, and that some of the items stolen were not brand new. In the opinion of the court, **\$600.00** would fairly compensate Claimant for his loss.

Claimant is hereby awarded damages for property loss in the sum of Six Hundred Dollars (**\$600.00**).

(No 74-69—Claimant awarded \$2081.33.)

CHARLES F. SCHMIDT, Administrator of the Estate of HELEN H. BOWMAN, Deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 19, 1976.

POULAKIDAS, POULAKIDAS & WOOD, ALEXANDER
POULAKIDAS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM
KARAGANIS, Assistant Attorney General, for Respon-
dent.

NEGLIGENCE—duty of State to patients. Where the State was negligent in employing unqualified doctor as staff physician, and that doctor was negligent in treating patient, the State is liable.

PERLIN, C. J.

This is an action by Charles F. Schmidt, the Administrator of the Estate of Helen H. Bowman, deceased, to recover the sum of **\$2081.33**, which was expended for the burial of Helen H. Bowman.

It appears from the stipulation and exhibits upon which this case was heard that on August **25, 1971**, Mrs. Helen H. Bowman was a patient at the Elgin State Hospital, an institution maintained and controlled by Respondent. On that date Dr. Ricardo Munoz, who was employed as a staff physician at the hospital under a limited license, administered a drug known as "Indiral" to Mrs. Bowman, which drug caused her death.

Dr. Munoz was subsequently indicted by the Kane County Grand Jury for the offenses of involuntary manslaughter and reckless conduct arising out of the death of Mrs. Bowman. A jury found him guilty of both charges.

It appears from the stipulation and exhibits that Dr. Munoz was not a qualified physician, that the State was negligent in employing him as a staff physician, and that Dr. Munoz was negligent in his treatment of the deceased.

Claimant is therefore awarded the sum of Two Thousand Eighty-One and 33/100 Dollars (**\$2081.33**).

(No. 74-152—Claimant awarded \$847.48.)

JOHN J. NIMROD, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion Filed September 15, 1976.

JOHN J. NIMROD, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM KARAGANIS, Assistant Attorney General, for Respondent.

~~CONTRACTS—lapsed~~ appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due Claimant.

HOLDERMAN, J.

Claimant filed a claim in the amount of **\$847.48** for travel expenses incurred while an employee of the Illinois Industrial Commission.

The appropriation from which the claim should have been paid has lapsed, therefore the matter is before this Court.

The record discloses that the Claimant was Assistant to the Chairman of the Industrial Commission and was also Project Director for the Occupational Safety and Health Program of the Industrial Commission.

The record also discloses that part of the expenses incurred was for attending the Annual Convention of International Association of Industrial Accident Boards and Commissions at Toronto, Canada, and at Madison, Wisconsin. It appears that at the Toronto convention, he was accompanied by the then Chairman of the Industrial Commission, and the record discloses that he went to both conventions at the direction of the Chairman.

Other expenses are for attending a Managers and Planners Workshop at Auburn University at Auburn, Alabama, attending a seminar on Occupational Health and Safety Plan and Laws in Illinois, and for attending other various health and safety programs in the State.

Among the exhibits is a letter from Alexander P. White, who was Chairman of the Industrial Commission

at the time the expenses were incurred, to the effect that he had examined the vouchers being submitted by Claimant, and he certified that these vouchers were correct in the amount expended by Claimant. He further stated that such expenditures were authorized by him as Chairman of the Industrial Commission at the time such expenditures were made.

The record discloses that after Mr. White left as Chairman of the Industrial Commission the new Chairman refused to approve the expenditures and informed the Claimant that he would have to present his claim to the Court of Claims.

It appears to the Court that the expenses were incurred in connection with Claimant's duties with the Industrial Commission of the State of Illinois, that the vouchers were proper and correct, and that these expenses were properly incurred.

An award is hereby made in the amount of Eight Hundred Forty-Seven and 48/100 Dollars (\$847.48).

(No. 74-315—Claimant awarded \$32,500.00.)

**JOHN V. THIELIN, ET AL., Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed November 19, 1976.

ROBERT J. GORMAN, Attorney for Claimants.

JOHN T. WARDROPE, Special Assistant Attorney General, for Respondent.

NEGLIGENCE—violation of statute. Where employee of State operates a state vehicle without brakes and enters an intersection against the light, the State is liable for the negligence of its employee.

PERLIN, C. J.

This action arises out of a motor vehicle accident

which occurred on July 5, 1973, at the intersection of 35th Street and Wentworth Avenue in Chicago, Illinois. It is alleged by Claimants that a disabled State of Illinois emergency patrol truck, being pushed by another State emergency patrol truck, went through a red light at the intersection. The patrol truck struck a car being driven by Claimant, John Thielen, in which Judy Thielen, Nellmary Grady and Michael Daley were passengers. Nellmary Grady and John Thielen suffered personal injuries in the accident and Judy Thielen, the 13 year old daughter of John Thielen, suffered injuries which resulted in her death. Michael Daley has not made a claim for injuries.

The accident occurred at about 9:45 p.m. Claimants were returning from a trip to the Indiana Dunes and had just exited the Dan Ryan expressway at 35th Street. The weather was dry and visibility was good. John Thielen and Nellmary Grady were seated in the front of the car and Judy Thielen and Michael Daley were in the rear. All were wearing seatbelts.

Nellmary Grady and John Thielen both testified that their car was westbound on 35th Street and came to a stop at a red traffic signal at Wentworth Avenue. These were two lanes for westbound traffic at 35th Street at this point, and an additional lane for traffic turning left onto Wentworth. The Thielen car was in the right-hand curb lane as it waited for the signal to change, and there was another westbound car in the lane to their left.

As Claimants waited for the light to change a disabled State of Illinois emergency tow truck being driven by Edward W. Pietrzyk was being pushed southbound on Wentworth Avenue by another State of Illinois emergency patrol truck being driven by Walter Talkowski.

Nellmary Grady said that she first noticed the trucks when they were about one-half block from the intersection. She said she next noticed them when the Thielen car was in the middle of the intersection, and she yelled, "The truck, my God, there's a truck." She said the truck struck the car in which she was riding in the middle of the intersection and spun it into a traffic signal in the center of 35th Street and Wentworth Avenue.

Ms. Grady said that after the accident the driver of the truck that struck them said that he was sorry, and that "he didn't have any brakes."

John Thielen said that he had noticed the trucks southbound on Wentworth as he was stopped at the red light. He said that they appeared to be driving fast. He next observed them when they were about 300 to 400 feet from the intersection. He said he next saw the trucks when they were almost upon his car in the intersection after Nellmary Grady had shouted a warning.

John Thielen testified that the driver of the truck which struck the car had a conversation with him at the accident site in which he said, "My God, I'm sorry, I didn't have any brakes." It appears that in his deposition, he had testified that he had not had a conversation with the driver of the truck at the accident scene.

Artis Haywood, a Chicago police officer who was present at the accident site shortly after the occurrence, testified for Claimants. He said that he and Officer Sam Cottrano investigated the incident, arriving at the scene at about 9:55 p.m. Over defense objection he testified to a conversation at the scene with Mr. Pietrzyk, the driver of the truck which struck Claimant's car. He said that Pietrzyk told him that his truck had stalled and was

being pushed from behind by another State truck; that when he came to the traffic signal at 35th and Wentworth the light changed to red and he was unable to stop because his motor was not running and he did not have any brakes.

Officer Haywood also testified, over defense objection, to a second conversation with Mr. Pietrzyk at the hospital about 45 minutes to one hour later in which Pietrzyk again admitted running the red light because his vehicle was without brakes.

John Thielen said that his daughter, Judy, who had been riding in the rear of the car, was found in the trunk after the accident. She initially yelled out that she was unhurt, but seconds later told her father that she was injured. Judy Thielen died about one hour after the accident, after she had been taken to a hospital. Prior to the accident she had been in excellent health and had never been hospitalized.

At the time of her death Judy Thielen was 13 years old and had a life expectancy of 65.1 years. She was an above average student who engaged in normal school and community activities. She was one of four children both to John Thielen and his wife Mary who had died in January, 1973. Mr. Thielen said that Judy and he had had a close relationship, and that she had performed many household duties prior to her death.

A hospital bill in the amount of \$156.50 for treatment rendered to Judy Thielen, and bills for burial expenses totalling \$1,846.36, were introduced into evidence. The bills had been paid by John Thielen.

John Thielen was hospitalized following the accident with injuries to his head and lower body. His hospital and doctor bills totalled \$1,728.80, and he testified to having experienced severe headaches and

blackouts after the accident. He claims approximately **\$4,300** in lost wages.

Nellmary Grady incurred medical expenses of **\$451** as a result of the accident and testified that she underwent therapy treatments for approximately **5** months after the accident for headaches, fainting spells and neck pains. She claims a wage loss of approximately **\$2,200**.

Respondent did not call any witnesses in defense of this claim. Over the Claimants' objections, Respondent introduced into evidence two reports of the Department of Transportation of the State of Illinois, indicating that that traffic light was amber when Mr. Pietrzyk entered the intersection. Also introduced into evidence was a report of a test made on Pietrzyk's truck five days after the accident. The report states that at 20 miles per hour, without the motor operating, the truck stopped in **12** feet the first time, **21** feet the second time, and **22** feet on the third test.

In order to recover on their claims, Claimants bear the burden of proving by a preponderance of the evidence that the State's employees were negligent in operating the disabled emergency tow truck which struck the Thielen vehicle; that such negligence was a proximate cause of the death of Judy Thielen and the injuries to John Thielen and Nellmary Grady; and that Claimants were free from contributory negligence. *Foreman u. State*, 26 Ill.Ct.Cl. 299; *Schunck u. State*, 25 Ill.Ct.Cl. 209.¹

1. Respondent makes a preliminary claim that the notice of intent to sue filed on behalf of the Estate of Judy Thielen in accordance with Section 22-1 of the Court of Claims Act, Ill.Rev.Stat., Ch. 37, §439.22-1, was invalid because it did not state the name and address of her attending physician. However, the notice does plainly state that there was no attending physician, as Judy Thielen was pronounced dead at the hospital to which she was taken. Claimant has therefore complied with the requirements of Section 22-1 of the Court of Claims Act.

We think that the negligence of Mr. Pietrzyk and Mr. Talkowski, the drivers of the State emergency vehicles involved in this occurrence, has been established. Both Nellmary Grady and John Thielen testified that immediately after the impact Pietrzyk came to their car and said, "My God, I am very sorry, I didn't have any brakes." Officer Haywood testified that Pietrzyk told him at the scene that the motor on his truck was dead, that he did not have any brakes, and that the light was red when he went through the intersection.

These admissions of Mr. Pietrzyk were properly admitted into evidence. *Perkins v. Chicago Transit Authority*, 60 Ill.App.2d 431, 208 N.E.2d 867. They establish that the State vehicle was being operated with insufficient brakes in violation of Ill.Rev.Stat., Ch. 95-1/2, 12-118(a), which requires that all motor vehicles have brakes adequate to stop such vehicles, and that Pietrzyk's truck did run a red light.

Respondent introduced no testimony to rebut the evidence offered by Claimants to establish these propositions and we therefore find that Claimants have established the negligence of Respondent by a preponderance of the evidence.

Respondent argues however that Claimants are not free of contributory negligence. Specifically, Respondent asserts that John Thielen was contributorily negligent in proceeding into the intersection when he had observed Respondent's trucks proceeding southbound on Wentworth Avenue, and that Nellmary Grady was contributorily negligent in failing to keep a proper lookout. However, we do not believe that either John Thielen *or* Nellmary Grady acted in other than a reasonable manner. Both were reasonably entitled to assume that Respondent's truck was being operated with proper brakes, and that it would stop at the intersection. Claimants

have established their freedom from contributory negligence by a preponderance of the evidence.

We further find that the negligence of the State was a proximate cause of the death of Judy Thielen, and the injuries suffered by John Thielen and Nellmary Grady.

With respect to the amount of damages to be awarded for the death of Judy Thielen, it is well settled that where a deceased leaves a lineal heir, there is a presumption of substantial pecuniary loss. *Baird v. Chicago, Burlington & Quincy Ry.*, 334 N.E.2d 920; *Hall v. Gillins*, 13 Ill.2d 26, 147 N.E.2d 352. It is therefore ordered that John V. Thielen, Administrator of the Estate of Judy Thielen, Deceased, be and hereby is awarded the sum of Twenty Thousand Dollars (\$20,000.00).

It is further ordered that John V. Thielen be, and hereby is, awarded the sum of Seven Thousand Five Hundred Dollars (\$7,500).

It is further ordered that Nellmary Grady be and hereby is, awarded the sum of Five Thousand Dollars (\$5,000).

(No. 74-345—Claimant awarded \$5,178.21.)

WILLIAM H. F. BRANDING, Claimant, *vs.* **STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION**, Respondent.

Opinion filed June 9, 1977.

DAILEY & WALKER, by MAURICE DAILEY, Attorney
for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—alteration of water flow. One who negligently alters the flow of water on the property of an adjacent landowner, and thereby causes damages, is liable to the adjacent landowner.

SPIVACK, J.

Claimant seeks to recover from the State the value of a portion of his soybean crop which was destroyed by flooding in the years **1973** and **1974**, the flooding having been caused by the State's negligent construction of a highway which bisects Claimant's land.

A hearing was conducted by Commissioner Godfrey who heard the testimony of the various witnesses; thereafter, Claimant filed his brief and argument; Respondent did not file a reply thereto, nor a brief upon the applicable law. In due course, Commissioner Godfrey filed his report which is, together with the transcript and pleadings, now before the Court. The material facts determined by the Commissioner are as follows:

Claimant owned a farm located in Madison County, Illinois. Respondent, sometime prior to **1973**, obtained a parcel of land from Claimant which bisected said farm. In the course of construction of a highway on said acquired land, Respondent caused to be installed a culvert under the highway in the line of natural water flow. Claimant testified that he was **84** years old and had owned the property for **61** years. During all of these years, he once lost one-fourth of an acre on account of water damage. The water always drained to the southeast. In **1973**, after two heavy rains, the east side of the culvert was dry, while there were **11-3/4** inches of water in the pipe on the west side, and the soybeans were half under water. Ralph Beckman who had farmed the land for **15** years also testified that the natural flow of water was from the northwest to the southeast. Further, that during the time he farmed the land, he had lost no more than an acre or so of land due to water damage. He

stated that after the culvert was installed, the water no longer flowed in the same direction because the culvert was higher on the east side than on the west side.

On the question of damages, Mr. Beckman testified that the reasonable value of the crop destroyed in 1973 was \$3,545.21, and in 1974 was \$1,633.00. No testimony was introduced by Respondent substantially disputing that the crops had indeed been destroyed by water, nor the market value thereof.

There seems to be no question about the statutory and case law applicable to the facts at bar. Ill.Rev.Stat., Ch. 42, § 12-4, provides, *inter alia*:

Whenever a natural drain . . . crosses a public highway . . . the highway authority . . . shall construct and thereafter keep in repair and maintain a bridge or culvert of sufficient length, depth, height above the bed of the drain or ditch, and capacity to serve the needs of the public with respect to the drainage of the lands within the natural watershed of such drain, not only as such needs exist at the time of construction, but for all future time.

This Court has also long held that one who negligently alters the natural flow of water on the property of an adjacent landowner, thereby causing damage, is liable to such abutting landowner. *Emerson v. State*, Ill.Ct.Cl. 5877; *Kroencke v. State*, Ill.Ct.Cl. 5439.

It is the finding of this Court that Claimant has proved by a preponderance of the evidence that the State's construction of the highway bisecting Claimant's land was performed in a negligent manner proximately causing the alteration of the natural flow of rainwater which in turn was the direct cause of the flooding of Claimant's land and destruction of his crops.

Accordingly, Claimant, William H. F. Branding, is hereby awarded the sum of Five Thousand One Hundred Seventy-Eight and 21/100 Dollars (\$5,178.21).

(No. 73-347—Claim denied.)

RICHARD STEVENS, Adm'r. of the Estate of CLYDE K. STEVENS,
Deceased, Claimant, *vs.* STATE OF ILLINOIS, and ELGIN STATE
HOSPITAL, a State Agency, Respondent.

Opinion Filed July 8, 1976.

JUERGENSMEYER & ZIMMERMAN, Attorneys for
Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM J.
KARAGANIS**, Assistant Attorney General, for Respon-
dent.

NEGLIGENCE—due cure. The State of Illinois is under a duty to render emergency medical attention—if not to the general public—at least to inmates, employees, and persons brought to the institution for voluntary or involuntary admission, and can be held liable for its negligence in performing or refusing to perform the same.

SAME—evidence. Where evidence indicated all symptoms observed in deceased before death could have arisen after his observation in State Hospital, and testimony indicated no signs of serious illness upon observation at State Hospital, claim was denied.

HOLDERMAN, J.

This is an action brought by Richard Stevens, Administrator of the Estate of Clyde K. Stevens, deceased, for the alleged wrongful death of Claimant's decedent. Claimant's theory of the case is that on December 26, 1972, the deceased was in need of medical attention; that he was taken to Elgin State Hospital, Elgin, Illinois, for medical attention; that the hospital negligently failed to give decedent the necessary medical attention; and that as a direct and proximate result thereof, he died the following day.

On December 26, 1972, Clyde Stevens was an unemployed 60 year old man, married, but separated from his wife, and the father of two adult children not dependent on him for support.

From on or about December 2, 1972, at his daughter's wedding, until sometime on December 26, 1972,

Clyde Stevens had apparently been drinking heavily and continuously. It is undisputed that he was an alcoholic.

The deceased, in December of 1972, was living at the Arlington Hotel, Aurora, Illinois. On December 26, at about 3:30 p.m., he called on Walter Dryden, the hotel janitor, to his room and told him that he was sick and wanted to go to the Elgin State Hospital.

The record discloses that on several previous occasions, after severe drinking bouts, Stevens had gone to the Elgin State Hospital for "drying out." Dryden called the Wayside Cross Mission and asked the Mission to take Stevens and one Glenn Brazel, another resident of the Arlington Hotel, to the State Hospital at Elgin. Brazel later changed his mind and decided to go to a private hospital because he had Medicare, but Dryden testified that Stevens wanted to go to Elgin.

It appears that at the time Stevens was shaky, incoherent, and, in the opinion of the witness, suffering from delirium tremens.

Mr. Ralph Brooker, Director of the Men's Department at the Wayside Cross Mission, testified that he and two other men from the Mission went to the hotel. He testified that Stevens was not drunk but that he "was wild eyed and he wasn't really sure where he was at or where he was going." This witness further testified that he was out of touch with reality. Brooker then called the Elgin State Hospital and told them he was sending two fellows over.

Marion Sybert, a truck driver for the Mission, testified that he went with Brooker to the hotel and that Stevens was pale and weak. He further testified that he could walk but was weak and trembling.

Sybert and one Dick Wilson drove Stevens to the Elgin State Hospital in a station wagon. When Stevens got out of the station wagon, Sybert noticed blood and feces where Stevens had been sitting. Sybert left Stevens at the admissions office and returned to Aurora.

Barbara Gavin, an intake worker in central admissions at the hospital, testified that she was on duty when Clyde Stevens was brought in for admission. She testified that he came "in under his own power." She further stated that because he had been brought in by the Mission, she figured his problem was alcohol. There was no doctor on duty at the intake office, so she drove him to the emergency room at the institution's medical-surgical building where he was seen by Arturo Rios, M.D., Medical Director of the Elgin State Hospital.

Dr. Rios took Stevens' blood pressure, listened to his heart, and wrote out a prescription for Librium, which Gavin took to the pharmacy to get filled. She then drove him back to central admissions where he was given bus money to go back to Aurora because he did not want to be admitted.

This witness testified that Stevens' arm was in a sling because he had a broken arm, and that he told her that he had told Dr. Rios he had an appointment with his own doctor.

She further testified he did not appear to be ill to her.

Dr. Rios testified that witness Gavin told him Mr. Stevens refused to be admitted, but she thought he should be examined.

Dr. Rios checked his eyes, pupils, mouth, lungs, blood pressure, respiration, and questioned him regarding the cast on his arm. He found a normal throat, no

dryness, chest normal, blood pressure 140/80, and pulse regular.

He further testified that Stevens said, "I don't know why I am here, I don't feel like I belong here." He asked Stevens if he wanted to undergo further tests to have a complete physical examination, and Stevens told him, "I don't want to be hospitalized."

Dr. Rios testified that the main purpose of the examination given Stevens was to make sure he wasn't intoxicated or in impending delirium tremens. The doctor further testified that it would have been possible for the deceased to have had pneumonia at the time he examined him, but that it was not clinically observable. He further testified that, in his opinion, the man was rational and free to choose what he wanted to do.

The deceased thereupon left the hospital and returned to Aurora by bus. Upon returning to the Arlington Hotel, he told witness Dryden that the hospital had kicked him out.

Witness Brooker testified that shortly before 5:00 p.m., an unidentified female employee from general admissions at Elgin called and wondered why he had sent Stevens to Elgin. She stated he appeared to be rational and motivated, and they didn't see any reason for admitting him. Brooker told the individual that Stevens had been intoxicated for three weeks and should be admitted.

On December 27, 1972, Dryden testified that he found Stevens sitting on an interior, second floor fire escape going up to the third floor, and that his pants were down about his knees. He stated he had messed all over himself with blood and everything, and that he knew he was in bad shape so he called the Fire Department. The Aurora Fire Department took Stevens to

Copley Hospital in Aurora where he died within a few hours of being admitted.

Dr. Charles A. O'Connor, an Aurora physician and surgeon, testified that he first examined Clyde Stevens on December 27, 1972, in the intermediate care area at Copley Memorial Hospital. He had been seen by a nurse in the emergency room and had been x-rayed.

Dr. O'Connor testified that he found an extremely ill white male who was in respiratory distress, his color was blue, and he had a bluish tint to his lips and fingernails. He also testified he had a fractured arm which was in a cast.

The doctor further testified that Stevens had extreme rales and rhonchi throughout both lung fields, indicating fluid in the lung, his pulse rate was **132**, his respirator count was **44** (normal for a 60 year old white man is about 14 to 20) indicating respiratory distress, he was dehydrated, and was somewhat incoherent. The x-rays showed peripheral left upper lobe pneumonia which Dr. O'Connor classified as a very early lobar pneumonia and stated that it was the cause of the pulmonary edema.

The patient was given antibiotics intravenously, oxygen nasally, a diuretic, intermittent positive pressure, a sedative because he was restless, codeine for pain, and digitalis. He died at the end of two and one-half hours.

Dr. O'Connor testified that, although he found the patient incoherent, talking out of his head, and in acute respiratory distress, he did not believe he was on the brink of dying at the time. The doctor was unable to state with a reasonable degree of medical certainty how long the condition of pneumonia had existed, but he

testified that the condition of pulmonary edema could not have existed for 24 hours before he saw him.

The doctor testified that the cause of death was pulmonary edema, a complication of pneumonia; that the pulmonary edema could have set in within the preceding hour or two; that it could have been the result of heart failure; and that the patient could have died from gram negative septic shock initiated within the previous hour. He further testified that the patient could have had some of his symptoms 24 hours prior to his seeing him, but it was possible that six hours prior to his death he had none of them.

Claimant's contention is that the State was negligent in turning the deceased away from the Elgin State Hospital and not giving him proper medical care at that time.

The following issues arise:

1. Is the State of Illinois under a duty to render emergency medical assistance to persons brought to State hospitals for such assistance?

In recent years it has become established law that private hospitals holding themselves out to render emergency aid can be held liable for the manner in which they render, fail to render, or refuse to render such aid to persons presenting themselves to the hospital for emergency attention.

The State of Illinois, having waived sovereign immunity, is bound by the same general principles of tort law in determining such liability as are private hospitals.

This matter is discussed briefly in 40 Am.Jur.2d *Hospitals and Asylums* 616, 20, and is very well briefed in 72 A.L.R.2d. 391, and 35 A.L.R.3d. 834. In 35

A.L.R.3d. **847, 848**, two cases involving failure to admit patients with pneumonia are discussed.

Inasmuch as the State of Illinois maintains, on the grounds of Elgin State Hospital, a hospital for the medical needs of its inmates, and also maintains an emergency room as part of the medical hospital, it can be stated as a general proposition that the State of Illinois is under a duty to render emergency medical attention if not to the general public at least to inmates, employees, and persons brought to the institution for voluntary or involuntary admission, and can be held liable for its negligence in performing or refusing to perform the same.

2. Was the State negligent in its medical treatment of Claimant's deceased?

As stated in **40 Am.Jur.2d Hospitals and Asylums**, 420 at **865**.

Where public institutions may be held liable for negligence, they are, in accordance with settled legal principles, held only to a duty of taking precautions against risks that may reasonably be perceived.

Contrary to Claimant's contentions, the weight of the evidence in this cause is that when Clyde Stevens was brought to Elgin State Hospital he did not appear to be in need of immediate medical attention. His blood pressure and heart rate were within normal limits, and he was having no trouble with his breathing. If he had pneumonia at this time, it was not clinically observable, and he rejected the offer made by the hospital to admit him and give him further tests. It is clear from Dr. **O'Connor's** testimony that the deceased could not already have been suffering from pulmonary edema at the time he was brought to Elgin State Hospital because if he had been, he would not have lived until the following day. Three hours before his death, on the following day, x-rays showed only an early lobar pneumonia affecting a

small portion of one lung. Although he was critically ill when Dr. O'Connor examined him, Dr. O'Connor did not feel even then that he was on the immediate brink of dying. Further Dr. O'Connor testified that some of Stevens' symptoms could have developed as recently as six hours before he saw him.

It has long been the rule of the State of Illinois that the burden is on the Claimant to prove his cause by a preponderance of the evidence. It is also the rule of the State of Illinois that it must be proven that the negligence complained of was the proximate cause of the damage, which in this case is the death of the deceased.

It is the opinion of this Court that the Claimant has failed in meeting the proof required.

Award denied.

(No. 74380 and 74-381—Claim denied.)

PHILLIP VAUGHN, ADMINISTRATOR, ET AL., Claimant, *us*.
STATE OF ILLINOIS, and DEPARTMENT OF TRANSPORTATION,
Respondent.

Opinion filed May 31, 1977.

WINSTEIN, KAVENSKY, WALLACE & DOUGHTY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD FELDMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—jurisdiction over claims sounding in tort. Ill.Rev.Stat. Chapter 37, Sec. 439.8(d) was amended effective October 2, 1972 by P.A. 77-2089, Sec. 1.

RECREATIONAL USE OF LAND AND WATERWAYS ACT—duty of care. Except for the duty not to willfully or maliciously fail to guard against or warn against a dangerous condition, the Act expressly absolves an owner of land of any duty of care toward a person using the land for recreational purposes.

HOLDERMAN, J.

This claim arises out of an unfortunate incident which occurred on June **30, 1973**. On that date, Philip Vaughn, his wife, Marilyn, and his son, Robert, were in a boat on the Rock River.

Philip Vaughn had purchased the boat and outboard motor a few days earlier and had never had it in the water until the day in question.

Mr. Vaughn was raised in Silvis, Illinois, and knew there was a dam by the name of Sears Dam but did not know exactly where it was.

He had placed the boat in the water several miles upstream from the dam. He testified he had never looked at the map or chart of the river and was not too well acquainted with this particular area although he had fished it at various times.

After putting the boat in the river, they started downstream, and along the way he made several adjustments to the propeller to try and get the pitch he desired. When they were a short distance above the dam, he noticed that things looked different and something was wrong.

At about this time, the boat's motor stopped and he was unable to get it started again. He dropped anchor but the current was so swift, it would not hold the boat. The boat began drifting toward the dam and he tried to paddle it toward the shore without any success.

He then jumped overboard and tried to swim and push the boat toward the shore but was unable to do so because of the swift current. He testified the river was higher than usual, and this probably accelerated the flow of the water. He then got back into the boat and when he saw they were getting close to the dam, they all jumped into the water. He held onto his wife and child,

both of whom wore life preservers but could not swim, and attempted to get them to shore which was approximately **40** feet away; but because of the current, they were swept over the dam. His wife and child were separated from him and, unfortunately, they both drowned. He was pulled from the river, and it was some time before the bodies of his wife and child were found.

Claimant at this time was living in Orion, Illinois, which is not too far from the place where the accident occurred.

Claimant testified that at no place between the place where he put the boat in the river and the dam were there any buoys or signs of any kind of warning that there was a dam in the river. There were no cables, ropes or anything of that nature stretched across the river upstream from the dam.

Claimant charges the State with the following acts of negligence:

(a) Failed to warn or advise boaters of the dangers of said dam or spillway by placing signs, markers, or buoys upstream from said dam or spillway.

(b) Failed to provide safety devices at or about said dam or spillway in order to protect boaters and others from being swept over said dam or spillway.

(c) Failed to provide rescue equipment at or about said dam or spillway for the use of boaters or others who have been swept over said dam or spillway.

The Court of Claims Act, §8(d), Ill.Rev.Stat., Ch. 37, §439.8(d), provides that this Court shall have jurisdiction to hear and determine matters sounding in tort as follows:

(d) All claims against the State for damages in cases sounding in tort *if a like cause of action would lie against a private person or corporation in a civil suit. . . .*

This language was incorporated into the Act by P.A.77-2089, Sec. 1, effective October 2, 1972, and im-

poses a somewhat different test for the State's liability in tort from the statutory language in force prior to October 1, 1972, which reads as follows:

(d) All claims against the State for damages in cases sounding in tort, in respect of which claims the claimants would be entitled to redress against the State of Illinois, in a civil action, *if the State were suable*. . . .

If under the current enactment the State can be sued in tort, if a like cause of action would lie against a private person or corporation in a civil suit, then it should have available to it the same defenses that would be available to a private person or corporation.

For that reason, the Recreational Use of Land and Water Areas Act, Ill.Rev.Stat., Ch. 70, **031-37**, enacted in **1965**, disposes of the issues in this case. Below are pertinent sections of the statute:

33. Duty of care or warning of dangerous condition. Except as specifically recognized or provided in Section 6 of this Act, an owner of land owes no duty of care to keep the premises safe for entry or use by any person for recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.

34. Effect of invitation or permission. Except as specifically recognized by or provided in Section 6 of this Act, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(a) Extend any assurance that the premises are safe for any purpose.

(b) Confer upon such person the legal status of an invitee or licensee to whom a duty of due care is owed.

(c) Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such person or any other person **who** enters upon the land.

36. Willful or malicious acts—Injury suffered by persons paying admission. Nothing in this Act limits in any way liability which otherwise exists:

(a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.

(b) for injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof.. .

There can be no recovery in tort unless there is a duty on the part of the Respondent to exercise care.

Section 33 of the above cited statute expressly absolves an owner of land of any duty of care towards a person using the land for recreational purposes, except the duty to willfully or maliciously fail to guard against or warn against a dangerous condition. There is a further qualification that liability is not limited where the owner charges for the recreational use. Here there is no allegation or proof of any willful or malicious misconduct on the part of the State. Nor is there any allegation or proof of charge for boating on the river.

Section 32 of the statute defines land to mean water or watercourses, and defines recreational purposes to include boating.

If at the time of the occurrence in this case the Sears Water Power Company had still owned the dam, it would appear that no action would lie against the company. Since no action would lie against a private person or corporation, no action will lie against the State.

This is a case of first impression in this Court. Further to date the Recreational Use of Land and Waters Act has not been passed upon by the Illinois Supreme Court or any of the Appellate Courts of Illinois.

The language of the statute appears clear. When read with the language of Section 8(d) of the Court of Claims Act, it is manifest that no cause of action can lie against the State of Illinois for Claimant's injuries.

For the above reason, this claim is denied.

(No. 74-490—Claimant awarded \$5,000.00.)

ROSE PAVLIK, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion Filed November 8, 1976.

WAYNE E. PETERS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM KARAGANIS, Assistant Attorney General, for Respondent.

NEGLIGENCE—*duty of cure*. Mere treating of floor with a substance that gives it a polished surface is not negligence per se and some more positive act of negligence must be shown before recovery can be had.

SAME—*evidence*. Where evidence indicated State had knowledge of a highly polished floor, should have had knowledge that it was raining, and that wetness on the floor could cause it to become hazardous to users of entranceway, State is liable for its negligence, if a user who is not contributorily negligent slips and is injured.

HOLDERMAN, J.

Claimant, Rose Pavlik, seeks recovery in the amount of **\$17,112.00.**

On October 4, 1973, Claimant, a meter maid employed by the City of Chicago, sustained an injury at **2653** West Madison Avenue, Chicago, Illinois, at a place commonly known as “The Madison Street Armory.”

Claimant was employed as a meter maid for the Bureau of Parking, City of Chicago. She had been assigned to take training at the premises when the accident occurred. On the day in question, the Claimant, accompanied by two other meter maids, had entered the door of the armory, walked across a mat approximately **10** feet long, and then stepped onto the terrazzo tile floor where she fell.

The evidence shows that on the day in question there was a drizzly rain falling and that it had been raining for some time.

After Claimant stepped off the mat and onto the terrazzo floor, she fell and dislocated her right shoulder. Claimant testified that the floor was highly polished and very slippery.

Claimant further testified that she was off work for two months and then left her **job.**

Claimant's special damages are as follows:

Northwest Memorial Hospital	\$114.80
Dr. James Milgram	40.00
Dr. Leonard Smith	105.00
Southwest Radiological Laboratory	26.00
Dr. John Walker	39.00
Herron Medical Center	159.00
Holy Cross Hospital	52.00
<hr/>	
Total Special Damages	\$535.80

Claimant testified that she received \$105.00 per week in Workmen's Compensation and a further lump sum settlement of \$3,000.00 for a **15%** loss of use of her arm. Her medical bills and the above payments were paid by the United States Fidelity & Guaranty Company, the compensation carrier, who claims a subrogation lien for the payments made on Claimant's Workmen's Compensation claim.

The two companions who accompanied Claimant testified that the floor was highly polished and slippery and, in fact, one of them slipped but did not fall. This occurred when she stepped off the rubber mat and onto the terrazzo floor.

The custodian of the armory in question was called as a witness for the Respondent. He stated that on the day and time in question he was called to assist Claimant while she was on the floor. He testified that the terrazzo floor is kept waxed twice a year and buffed about every day, but he did not recall when the floor was waxed prior to Claimant's fall. He further testified that the floor was highly polished. He also stated that there were no previous falls or injuries on said floor.

Before the Claimant can recover she must show that she was free from contributory negligence, and that negligence on the part of the State was the proximate cause of the injuries.

This Court, in the case of *Ida Rosenthal vs. The Board of Trustees of the University of Illinois*, 29 Ill.Ct.Cl. **251**, passed upon a similar situation. In citing the case of *Dixon vs. Hart*, **344** Ill.App. **132**, **101** N.E.2d **282** at **284**, the Court said:

We have concluded for an examination of the law in Illinois as well as in other jurisdictions that as a general proposition the mere treating of a floor with a substance that gives it a polished surface is not negligence per se . . . The cases establish that some positive act of negligence must be shown before recovery can be had, such as: that an excessive quantity of polish must be used, that it was applied unevenly, that the floor had been freshly polished, and no warning given, that one section of the floor was waxed or oiled while the remainder was untreated, or that a floor was polished where people would step on it unexpectedly. . . .

There is no evidence that Claimant was guilty of contributory negligence. She was walking in an area close to the entrance which was constantly used for foot traffic, and she apparently did nothing to contribute towards the accident.

The State had knowledge that this was a highly polished floor. It should have had knowledge that it was raining on the day in question, and that wetness on the floor could cause it to become hazardous to users of the entranceway.

Claimant has already been reimbursed for her medical expenses, and she received the sum of **\$105.00** per week in Workmen's Compensation. She also received a lump sum settlement for a **15%** loss of use of her arm. The United States Fidelity & Guaranty Company, the compensation carrier who made the above payments, is entitled to its subrogation lien for all payments made **on** behalf of Claimant.

It appears to the Court that the Respondent was guilty of negligence in allowing the terrazzo floor to be in a slippery and wet condition, and this negligence directly caused Claimant's injury.

Claimant is hereby awarded the sum of Five Thousand Dollars (\$5,000.00), which amount shall be subject to the subrogation rights of the United States Fidelity & Guaranty Company.

(No. 74-514—Claim denied.)

FRANK WING, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion Filed February 16, 1977.

HOLLOWBOW, TASLITZ, GROMBACKER and HOLLOWBOW, by WILLIAM L. SMITH, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, for Respondent.

HIGHWAYS—duty of State. The State is not guilty of negligence unless it has reasonable notice of dangerous condition and fails to warn the motoring public.

SAME—contributory negligence. One who regularly travels along a portion of road is chargeable with knowledge of the condition of that road. In addition where evidence indicated Claimant was driving too fast for conditions and was not wearing corrective lenses, he was contributorily negligent.

POLOS, C. J.

This is an action to recover for personal injury and property damage sustained by Claimant, Frank Wing, on April 21, **1973**, when the motorcycle he was riding struck a large hole in the pavement of the Stevenson Expressway in Chicago, Illinois. Claimant contends that the State was negligent in maintaining the highway in that it permitted the hole to develop and remain in the pavement and did not warn motorists of its existence. It is Respondent's position that it had no notice of the existence of the hole, and that in any event Claimant failed to establish his freedom from contributory negligence.

Frank Wing testified that on April **21, 1973**, at about **9:45 p.m.**, he left an apartment building he owned

and managed on the northwest side of Chicago and proceeded by motorcycle to his home on the city's southwest side. Wing was an experienced motorcycle rider, having ridden for over 20 years prior to the accident.

It was raining very heavily as Wing proceeded home. He was wearing leather boots, a leather jacket, a helmet and goggles. His route took him southbound along the Stevenson Expressway. Claimant said that he drove this route very frequently and had done so one week prior to the accident.

It was still raining heavily as Claimant approached the Damen Avenue exit ramp of the expressway. At a point approximately 300 yards before the exit ramp Claimant's motorcycle struck a hole in the pavement in the right hand lane. Claimant alleged that he did not see the hole because it was filled with rainwater. He said that he was travelling about **40** miles per hour when he struck the hole. He was thrown over the handlebars of his motorcycle to the pavement. He said he bounced twice on the pavement, skidded for some distance, and finally came to rest 50 to 100 yards from the hole in the pavement. He said that although he was dazed, he was able to remount his motorcycle and complete his trip home.

After arriving at his home, Claimant called the Chicago Police Department, and an officer came to his home and made a report of the accident.

Claimant said that the following day he experienced pain and stiffness in his neck and hip, and sought medical attention.

Claimant said that he also went back to the accident site on the day following the accident and examined the hole in the pavement. He identified two

photographs of a hole approximately four inches deep, and two feet by three feet in size. It appears that the hole had been previously repaired, and the restraining rods under the pavement were clearly visible at the bottom of the hole.

Two days after the accident, Wing saw a chiropractor for injuries sustained in the accident. X-rays were taken, and Claimant said he was advised to stay in bed for a few days. Claimant stated he saw the chiropractor from **10 to 12** times, and that he was billed **\$342.00**. He also claims that he was unable to work for three weeks after the accident, and claims a wage loss of \$870.66, and property damage to his motorcycle in the amount of **\$822.10**.

On cross-examination, Claimant admitted that his vision had been obstructed on the night of the accident by the heavy rain, but said that he had not stopped to wipe off his goggles from the time he left his apartment building to the time of the accident. He also said that he had glasses which he wore for both close work and seeing at a distance but was not wearing his corrective lenses at the time of the accident.

Claimant said also that he had traveled the Stevenson Expressway weekly for some time prior to the accident, and that he had done so within one week of April **21, 1973**.

Joseph J. Kostur was the sole witness called by Respondent. Kostur was District Safety Claims Administrator for the Department of Transportation and was responsible for investigating traffic accident claims against the State of Illinois. Kostur said that, to his knowledge, the State had not received notice of a hole in the pavement of the Stevenson Expressway at the accident site prior to the accident.

Respondent introduced into evidence a copy of a Department of Transportation investigative report which indicates that the State did have notice of a hole in the pavement on the Stevenson Expressway, approximately one block from the accident site. The report states that on March **29, 1973**, the Department of Transportation was notified of holes in the pavement on the Stevenson Expressway at approximately **1400 West** and **1700 West**. The report also indicates that repair crews were at work on the Stevenson on March **30**, and April **2, 3** and **11**. Kostur said that those crews should have patched the entire highway on any one of those days.

The report also indicates that the Chicago Communications Center of the Department of Transportation received a report on April **22, 1973**, the day following the accident, of two holes in the curb lane of the southwest bound Stevenson Expressway at **1400 West** and **1700 West**.

Kostur said that these holes were “not exactly” in the area of the Claimant’s accident.

It is axiomatic that the State is not an insurer of the safety of all persons who travel upon its highways. *Schuck v. State*, **25 Ill.Ct.Cl. 209**. Rather, the State is charged only with using reasonable diligence in maintaining the roadways under its control. To recover on his claim, Claimant thus bears the burden of establishing by a preponderance of the evidence that the State breached its duty to use reasonable care in maintaining the highway at the accident site; that the State’s breach of duty was a proximate cause of Claimant’s injury; and that Claimant was free of contributory negligence. *Howell v. State*, **23 Ill.Ct.Cl. 141**.

Respondent argues strenuously that Claimant has

failed to establish either that the State had actual notice of the existence of the hole in the pavement of the Stevenson Expressway prior to the accident, or that the hole had existed for so long a period as to charge the State with constructive notice of its existence. See *Joyner v. State*, 22 Ill.Ct.Cl. 213,217. Claimant contends that photographs of the hole, which were introduced into evidence, establish that the condition “was a condition that occurred slowly over many months . . . ,” and that the State is thus chargeable with constructive notice of the existence of the condition. Alternatively, Claimant asserts that the Department of Transportation reports prove that the State had actual notice of the hole.

We need not reach this issue however, because we must conclude that Claimant was not in the exercise of due care and caution for his own safety at the time of the accident.

Claimant himself testified that he traveled the Stevenson Expressway weekly and had done so as recently as one week prior to the date of the accident. Claimant also alleges that the deteriorating pavement which caused the hole to form had occurred slowly over many months. If this were true, surely Claimant, in the exercise of due care, would have noticed the hole on one of the prior occasions when he used the highway. This is particularly so in view of the fact that photographs of the hole in question which were introduced into evidence show that it was of substantial size. We have previously held that where one regularly travels along a portion of road, he is chargeable with knowledge of the condition of that road. See *Link v. State*, 24 Ill.Ct.Cl. 69.

We also think that in driving his motorcycle at 40 miles per hour in a torrential downpour on a highway, Claimant exceeded a reasonable speed under the circumstances. There was nothing to stop the Claimant

from proceeding at a slower speed, given the weather conditions, despite a posted minimum speed limit. Such a minimum speed limit is always contingent upon the circumstances, and we think that a motorcyclist traveling in a torrential downpour would in the exercise of due care proceed at a slower speed.

Finally, we note Claimant's testimony that his eyesight was progressively getting worse. Claimant said that he wore one pair of glasses for reading and another for seeing distances, yet he was wearing neither on the night of the accident.

From the foregoing facts, we must infer that Claimant was not utilizing reasonable care under the circumstances at the time of his accident. This claim is denied.

(No. 74-551—Claimant awarded \$5,000.00.)

REHMON FAILS, **Administrator**, ET AL., **Claimant**, *vs.* STATE OF ILLINOIS, **Respondent**.

Opinion filed November 8, 1976.

ZAIDENBURG, HOFFMAN, SCHOENFELD and SCHEFFRES, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; PEGGY BASTAS, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where Claimant and Respondent stipulate to facts and damages an award will be entered accordingly. Claimant received negligent care at state hospital resulting in burns to body and ultimately death.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the damages sustained as a result of the death of Mary Louise Fails while a patient at the Illinois Department of Mental Health facilities at Manteno, Illinois.

On May **19, 1973**, she resided at Manteno State Hospital. At approximately **10:00 a.m.**, Manteno aides put Mary in a bathtub, turned on the water, and left her in the tub for approximately **30** minutes. During the bath Mary complained that the water was too hot. Several aides placed their hands in the water and stated that it was lukewarm. Mary required assistance in getting out of the tub. As she was being lifted from the tub her skin began to peel off the left knee and buttocks.

Dr. Georgis, a staff physician, was called immediately. Mary was taken to Bowen Hospital where Dr. Olivares' examination showed: "Circulatory collapse. Extensive second degree burns about 20 to **30** percent."

Mary was transferred to Chicago Read Hospital where she died on May **31, 1973**, due to complications following the injury. The injury was diagnosed as scald burns. No autopsy was performed.

An extensive investigation was made at the Manteno facility to determine the cause of Mary's injuries. The investigation ruled out radiator, water and sun burns.

Several alternative theories were proposed by William Kunz, Administrative Assistant at Manteno State Hospital; he concludes his report by stating, "I cannot find any single alternative hypothesis which, taken by itself, seems appreciably more likely than the scald theory."

A coroner's inquest was held on September 20, **1973**, at **11:30 a.m.**, which included the cause of death

from the pathological report and protocol signed by Dr. Tae Lyong An, the Coroner's pathologist:

In my opinion, the said Mary Louise Fails' death was due to septic shock incidental to scale bums.

The verdict of the Coroner's jury was:

We, the jury, do not know how, when or where the deceased received said injuries; therefore, our verdict is undetermined as to whether this is an accident or otherwise.

At the time of Mary's death, the statutory maximum recovery against the State was **\$25,000.00.**

The Attorney General's office filed a counterclaim against the Estate in the amount of **\$17,312.80** for the hospital care and treatment of Mary Louise Fails from June **20,1970**, through May **31, 1973.**

The decedent is survived by a minor child, Cathy Jean Fails.

The Department of Mental Health, represented by Special Assistant Attorney General Ronald W. Olson, decided that the claim should be adjusted if possible, and the Department concurred.

Pursuant to the Department's request for an adjustment, a stipulation was prepared and sent to the Court, whereby it appears that all matters in controversy between Claimant and the State of Illinois have been adjusted to the mutual satisfaction of the parties and their attorneys.

Claimant is hereby awarded the sum of Five Thousand Dollars (\$5,000).

(No. 74-662—Claimant awarded \$991.00.)

CHICAGO WIRE, IRON AND BRASS WORKS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS and DAN FOGEL, Respondents.

Opinion filed April 4, 1977.

SUDAK, GRUBMAN, ROSENTHAL & FELDMAN BY
LARRY KARCHMAR, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J.
GROSSMAN, Assistant Attorney General, for Respondent.

CONTRACTS—*implied warranty of fitness for particular purpose.* Where seller of a product has reason to know the particular purpose for goods and buyer relies on the seller's skill and judgement, there is an implied warranty of fitness for the specific purpose.

CONTRACTS—*time of the essence.* Where evidence indicated no complaint was made by Respondent as to the delay, Respondent did not comply with the termination provisions of the contract, and rejection of goods was based on appearance and not delay, Respondent cannot avail itself of the time provision of the contract despite Claimant's delivery 2-1/2 weeks late.

CONTRACTS—*mutuality of assent.* Unilateral mistake of fact of Respondent could not relieve it of its obligations where Claimant changed its position in reliance on the agreement.

CONTRACTS—*measure of damages.* Where a contract is breached by a party in refusing to accept goods contracted for, the proper measure of damages for such breach is the loss of profits suffered by the non-breaching party, less any expenses that would have been necessarily incurred by him on performing his part of the contract.

POLOS, C. J.

This is an action to recover the sum of **\$1,494.00** which Claimant, Chicago Wire, Iron and Brass Works, Inc., alleges it is due on a contract for the manufacture of detention screens for the Illinois Department of Corrections.

Claimant is in the business of weaving steel and iron into finished iron products to be used for security purposes. It supplies security screening for various governmental agencies and private companies.

In August, **1972**, the Vice President of Claimant, William J. Noelle, received a request from the Illinois Department of Corrections to supply and install security screens for its facilities at **2551** North Clark, Chicago. The facility, a community based correctional center,

housed teenagers—some voluntarily and some as parolees.

Mr. Noelle visited the facility and met with the building engineer, Michael O'Sullivan, and Mr. Allen C. Brandt, Assistant Superintendent of the facility. The representatives of the Department of Corrections informed Mr. Noelle that the residents had been throwing objects out of the window, and the facility had received complaints from pedestrians on the sidewalk outside the building. Mr. Noelle testified that he was told that the Center needed devices that would prevent solid objects from being thrown out of the windows. Mr. Brandt testified that he specifically requested devices to prevent the throwing of all objects out the window, including liquids. Mr. Noelle said that he informed Mr. Brandt and Mr. O'Sullivan that he would install half-diamond, woven mesh screens on the windows, and that detailed specifications would be mailed to them. Mr. Noelle then measured the window openings designated for the security screens.

On February **16, 1973**, Claimant sent a proposal to the Department of Corrections for the covering of the windows at the State facility from the second to the eighth floors. The proposal referred to the product as "detention screens" and contained the specifications for the screens as "one and one-half inch woven diamond number nine, one-half hard galv., three-eighths rod frame," and further specified the type of locks and fastenings in detail.

Because of cost factors, Mr. Noelle was requested to resubmit a proposal covering only three floors of windows and to have the screens attached to the building from the inside rather than from the outside as had been previously proposed. On February 26, **1973**, a second

proposal was submitted using the same language for the specifications. The proposal was for **\$1,490.00** and was sent to Mr. O'Sullivan.

The proposal was routed through the State's purchasing processes including the Office of Supervising Architect of the Department of General Services who executed an acceptance of the proposal. Mr. Noelle executed on behalf of the Claimant forms required by the State of Illinois, which contained among others, the following provisions:

(1) That time is of the essence of this acceptance and all work shall commence forthwith and shall be completed not later than April 15, 1973 and

(3) That if the Contractor persistently fails to supply enough properly skilled workmen or material, or fails to replace unsuitable work or material or otherwise be guilty of a substantial violation of the provisions of this acceptance, then the State, upon the Certificate of the Office of Supervising Architect that sufficient cause exists to justify such action may, without prejudice to any other right or remedy, and after giving the contractor three days written notice, withhold all further payments, terminate the employment of the contractor and take possession of all materials, tools and appliances on the premises.

Claimant thereafter proceeded to manufacture the screens according to the specifications. On May 3, 1973, the screens were delivered to the facility and after some were installed, Mr. Brandt stopped the work and demanded the removal of the screens which were already installed. The sole reason given for this demand was one of appearance. According to Mr. Brandt, the screens which looked like chain link fencing gave the facility the appearance of a prison. The screens were however in conformity with the specifications. The objection of the State was that the product was sufficient but the style was not sufficient.

The screens were removed and were left at the facility where they are still stored.

Claimant sent to the Department of Corrections an invoice of **\$992.00** being the contracted amount of

\$1,490.00 less credits for unexpended labor and parts not used in the amount **of** \$498.00.

The screens were custom made and specially sized for this job and had no value other than covering the measured window openings.

The Respondent contends that the Claimant is not entitled to recover on one or more of the following grounds:

(1) That there was an implied warranty of fitness for the purpose intended; that Respondent relied on Claimant's expertise; and the implied warranty was breached in that the product was not useful for that type of facility.

(2) That time was **of** the essence **of** the contract and that Claimant failed to perform on time, which constituted a breach.

(3) That there was never a valid contract because there was never a mutuality **of** assent.

(4) That if there was a valid contract, Claimant's damages were not proven with certainty.

As to the contention that there was an implied warranty of fitness for purpose intended, the Court agrees that where the seller of a product has reason to know the particular purpose for goods and buyer relies on the seller's skill and judgment, there is an implied warranty of fitness for the specific purpose. Uniform Commercial Code, Ill.Rev.Stat., Ch. 26, §2-315.

However, this provision is not applicable here. In this case, there is no evidence that the Claimant was told anything about appearance. There is no evidence that the Claimant knew or was told the exact nature **of** the Center except that it was a correctional facility

operated by the Department of Corrections. Claimant had no reason to know that Respondent would not appreciate the facility having windows looking “prison-like.”

The goods did, in fact, fit the intended purpose of preventing the throwing of objects out the windows. Even if one agrees with the testimony of the Respondent’s witness that the Claimant was informed that Respondent wanted the screens to prevent liquids from being thrown out the windows, it is apparent that no screen could fully meet that purpose.

In any event, Respondent had full opportunity to check the specifications. Although the Assistant Superintendent and Building Engineer testified that they did not understand the technical language in the proposal, the office of the Supervising Architect knew, or should have known, the meaning of the specifications. The proposal was clear in that it showed the mesh size as one and one-half inches, and even a layman could understand that there was one and one-half inches of space between the wire strands. Further, the screens were described as “detention screens.”

It is clear to the Court that Respondent understood, or should have understood, what was proposed and accepted the proposal as submitted. Therefore, the implied warranty of fitness for intended purpose was not breached.

The Court must likewise reject Respondent’s contention that there was a breach of contract by failing to perform in a timely manner. It is true that Claimant delivered the goods two and one-half weeks after the contract date. But no complaint was made by Respondent as to the delay. The refusal to accept was based on the appearance of the product, not the time of delivery.

Further, the Respondent never sent a three-day notice to the Claimant as required by Paragraph 4 of the contract between them. It cannot avail itself of the time provision of the contract unless it complied with the termination provisions in the very same contract.

Respondent's contention that there was no mutual-ity of assent is without merit; Respondent cites *Globe Brewing Company us. Simon*, 132 Ill.App. 158, **202**; *Utey us. Donaldson*, 94 U.S. 29, 48; 24 L.Ed. 54; and *Bank of Marion us. Robert Fritz, Inc.*, 291 N.E.2d 836, 9 Ill.App.3d 102, 108. None of these cases have any applicability to the facts in this case. Respondent argues that the word "screens" had a different meaning to each of the parties. That may have been true, but the specifications in the proposal were not susceptible to more than one meaning. Certainly the office of the Supervising Architect of General Services understood those specifications. Certainly the Department of Corrections which operates the correctional institutions of the State of Illinois had on previous occasions purchased security screens or detention screens for its various institutions. The fact that Mr. Brandt or Mr. O'Sullivan did not personally understand the specifications does not excuse the Respondent who had access to all of the resources of the State government to ascertain the nature of the specifications. If a mistake was made, it was an unilateral mistake by Respondent. As expressed in *New Amsterdam Import Co. us. L & S Development & Transfer Co.*, (113 N.Y.S. 864):

Defendant's unilateral mistake of fact was not such as could relieve it of its obligations under the contract since Plaintiff changed its position in reliance on the agreement.

As to Respondent's contention that the damages were not proven, it is clear that the purchase price was \$1,494.00. The State is entitled to credit for the unex-

pending labor and for material not delivered which testimony revealed to be **\$498.00.**

This Court stated in *George C. Petersen Co. vs. Illinois*, 10 Ill.Ct.Cl. 673:

Where a contract is breached by a party in failing and refusing to accept goods contracted for, the proper measure of damages for such breach is the loss of profits suffered by the other party to the contract occasioned by such nonacceptance, less any expenses that would have been necessarily incurred by him in performing his part of the contract.

In this case the lost profit is the difference between the purchase price of **\$1,494.00** and the unexpended labor and material in the amount of **\$498.00.** Respondent is not entitled to any credit for the product delivered inasmuch as it is worthless to the Claimant according to Claimant's undisputed testimony.

It is therefore ordered that Claimant, Chicago Wire, Iron and Brass Works, is awarded the sum of Nine Hundred Ninety-Two Dollars (\$992.00).

(No. 74-816—Claimant awarded \$325.00.)

HAZEL HAMBY, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed October 22, 1976.

MILLER and POMPER, by **EDWARD SCHATZ**, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **RICHARD GROSSMAN**, Assistant Attorney General, for Respondent.

NEGLIGENCE—duty of care. State is not an insurer of the safety of all who enter upon the premises maintained by the State.

SAME—evidence. Where evidence indicated State had sufficient notice that it was raining outside and made no effort to keep floor of premises dry, and Claimant was acting with reasonable caution for her own safety, State will be liable for injuries sustained from slip and fall.

PERLIN, C. J.

This is an action to recover for personal injury sustained by Claimant on June 12, 1972, when she fell on a wet floor in the Secretary of State facility at 570 West 209th Street, Chicago Heights, Illinois.

Claimant was the sole witness to testify in these proceedings. She stated that it had been raining heavily "on and off on the day of the incident. At about 11:30 a.m., she walked into the Secretary of State office in Chicago Heights carrying a one year old child in her arms. She said that as she entered the building her feet slid out from under her and she fell to the floor. She testified that she examined the floor and that it was "really wet" just inside the door.

Claimant said that she injured her back and the lower part of her left leg in the fall. **She** was immediately taken to St. James Hospital for emergency treatment for which she was charged \$69. Thereafter, she saw her family doctor three times for treatment of her injuries for which she was billed a total of \$40. Claimant had no other out-of-pocket expenses as a result of the incident, and at the time of the hearing herein was suffering no ill effects from her fall.

It is axiomatic that the State is not an insurer of the safety of all who enter upon a premises maintained by the State. However, the State does owe a duty to members of the public to use reasonable care in maintaining its premises in a reasonably safe condition. See *Kamin v. State*, 21 Ill.Ct.Cl. 467; *Divis, et al. v. State*, 27 Ill.Ct.Cl. 135. Claimant therefore bears the burden of proving by a preponderance of the evidence that the State did not use reasonable care in maintaining the Secretary of State facility in Chicago Heights; that she was free of contributory negligence; and that the negligence of the State was a proximate cause of her injury.

The State argues that Claimant's testimony as to the condition of the floor was uncorroborated. However, the State fails to explain why it made no effort to refute Claimant's testimony by calling an employee of the Secretary of State's office who could testify as to the facts of the occurrence. The testimony is unrefuted that the rain was heavy, although intermittent, on the day of the incident. It appears that the State had sufficient notice of the raining condition and should have made some effort to keep the floor of the facility dry. In failing to do so, we think that the State failed to use that degree of care reasonable under the circumstances, and that the State's negligence was a proximate cause of the Claimant's injury.

Claimant testified that she walked into the Secretary of State's office in a normal manner and slipped as she crossed the threshold. Claimant appears to have been acting with reasonable caution for her own safety, and we find that she has established her freedom from contributory negligence.

Claimant's total medical bills arising from this incident were \$109. She did not have any ill effects from the accident at the time of the hearing herein.

Claimant is hereby awarded the sum of Three Hundred Twenty-Five Dollars (\$325.00).

(No. 75-93—Claimant awarded \$3,007.22.)

**PAUL J. VICKROY, ROY Y. TATE and CHAMPAIGN NATIONAL
BANK, as Trustee, Claimants, vs. STATE OF ILLINOIS,
Respondent.**

Opinion Filed June 23, 1977.

J. C. ERMENTROUT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE —alteration of water flow. One who negligently alters the flow of water on the property of an adjacent landowner and thereby causes damages is liable to the adjacent landowner.

DAMAGES—stipulation. Where Claimant and Respondent stipulate to facts and damages an award will be entered accordingly.

POLOS, C. J.

This is an action by Paul J. Vickroy, a tenant farmer, to recover for damages to growing crops resulting from the interference by Respondent of surface drainage on certain land.

The complaint herein alleges that Respondent acquired by threat of condemnation a right-of-way for an **interstate public highway which ran across the east side** of certain land farmed by Vickroy. The drainage on the land was on an eastward direction, and in constructing the highway, Respondent interfered with the normal flow of drainage across the land and did not provide for adequate sewers to permit the water to flow under the highway.

The complaint further alleged that the State acted in a negligent and careless manner in interfering with the normal flow of drainage across the property, and that as a result thereof, **23.5** acres of crops were flooded and destroyed in **1973**, and that Claimant Vickroy was damaged by reason thereof in the amount of **\$4,081.42**.

At the hearing herein, Respondent stipulated to each and every allegation of the complaint, excepting only Claimant's allegation of the amount of damage sustained. The parties then stipulated to a reduced damage claim in the amount of **\$3,007.22**.

On consideration of the complaint herein, the allegations of which are admitted by Respondent, and the

stipulation as to damages, it is hereby ordered that Claimant be, and hereby is, awarded the sum of Three Thousand Seven and 22/100 Dollars (\$3,007.22).

(No. 74-857—Claim denied.)

GRAYBAR ELECTRIC COMPANY, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 25, 1977.

CONTRACTS—burden of proof. The burden of proof falls on Claimant to prove by preponderance of the evidence the material allegations of the claim.

SAME—evidence. Where evidence indicated that a spool of wire, payment for which was the basis of the claim, had in fact been duly returned to Claimant, the claim for purchase price therefor is denied.

SPIVACK, J.

Claimant seeks recovery from the State in the sum of One Thousand One Hundred Thirty-Four Dollars (\$1,134.00) on account of one roll of electrical wire furnished on an emergency basis to the Illinois State Penitentiary at Vienna. Respondent defends upon the ground that the wire in question was a replacement for a defective roll previously paid for and returned. The return of the defective roll to Claimant is the only issue of fact, the determination of which is dispositive of the case at bar.

The matter was assigned to Commissioner Rath who conducted a hearing on June 27, 1975. Thereafter, the transcript of the evidence together with the Commissioner's Report was duly filed with this Court.

The evidence adduced showed that Claimant had informed the State Penitentiary that upon receipt of the defective reel of wire, full credit would be issued. Claimant's records failed to disclose actual receipt of the wire

and also failed to disclose any refusal by the State to return the defective wire.

Respondent's witnesses testified that arrangements were made to replace the damaged wire through Claimant's suppliers in St. Louis, Missouri. An employee of the Vienna Correctional Center was designated to drive an institutional vehicle to St. Louis, delivering the defective wire, and in return picking up the replacement wire. The evidence showed that the damaged wire was loaded onto the institutional truck by the employees at Vienna Correctional Center. The employee left with the damaged wire and returned the same day with a comparable roll of new wire of the same classification, size and configuration. The State employee who drove the damaged wire to St. Louis to pick **up** the new wire testified that he drove the wire to the premises of Claimant's supplier in St. Louis, unloaded the defective wire, and loaded a comparable spool of new wire which he then returned to the Correctional Center. The rolls of wire were **of** such a size that only one roll could be placed in the pick-up truck at a time.

The testimony of Respondent's employee to the effect that the damaged wire was returned to Claimant's supplier in St. Louis stands unrefuted and uncontradicted. The burden of proof falls upon the Claimant to prove by preponderance of the evidence the material allegations which constitute the claim. In the present case Claimants have failed to sustain their burden of proof; in fact, it might be observed that the preponderance of the evidence demonstrates that the damaged roll of wire was in fact returned to Claimant's supplier in St. Louis at the time that the new wire was picked up.

There are no questions of law to be determined in this case, and the sole question of fact going to the

issues having been decided adversely to the Claimant.

The claim is hereby denied.

(No. 74-890—Claimant awarded \$3,039.30.)

LEO S. DUGOSH and THERESE DUGOSH, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion Filed August 13, 1976.

JOHN C. HEDRICH and KENT A. RATHBUN, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*failure to maintain premises.* Where Respondent's failure to maintain repairs on drainage facilities resulted in flood damage to crops, Claimant may recover.

BURKS, J.

This is a claim for crop loss resulting from the negligent failure of the State of Illinois to maintain two drainage tubes lying under the Illinois Mississippi Canal.

In **1894** the United States of America had condemned certain farm land in Bureau County for the construction of the Illinois Mississippi Canal. The canal was 80 feet wide at the water line and 7 feet deep.

The pertinent part of the condemnation petition filed in the U. S. District Court for the Northern District of Illinois alleged:

That the United States will properly connect the tile drains now laid in said lands wherever the same are cut by said canal, carry the same under said canal and give the same a proper outlet on the south side thereof; so that after the completion of said canal, said lands will be as thoroughly drained as they are at the present time.

Claimants' land, then owned by a predecessor in title, was part of the land condemned. The natural

drainage of the land was south towards the canal by means of a natural drainage ditch which drained approximately two square miles of farm land, the water ultimately flowing into a creek known as Bureau Creek. The canal blocked this drainage. To correct this so that Claimants' land would continue to drain properly, the United States laid two 48 inch drainage tubes under the canal at a point where the natural drainage ditch would empty into the tubes thereby carrying the surface water under the canal. The United States obtained an easement from the property owner on the south side of the canal to construct a ditch carrying this water from the mouth of the tubes on the south side of the canal south into Bureau Creek. In addition, the United States laid **1900** feet of **10** inch tile along the north side of the canal **to drain into the two tubes.**

The property specifically involved in this claim is a **21** acre field bought by Claimants in **1966** and bordering on the north bank of the canal. In **1967** Claimants notified the Department of the Army Corps of Engineers that the tubes and the ditch south of the canal were plugged, and the Corps of Engineers did the necessary remedial work to restore the drainage.

In **1970** the State of Illinois took title to the canal from the United States government.

In early **1972**, the two culverts under the canal again began to fill. Thereafter, from **1972** forward, Claimants made repeated requests to the State of Illinois to clean out the tubes under the canal, the drainage ditch running from the south side of the canal to Bureau Creek, and the **1900** feet of tile running along the north side of the canal. The State failed to take any corrective action.

In July of **1972** the District Land Manager for the

Illinois Department of Conservation wrote to Claimants as follows:

Dear Mr. Dugosh

The Ranger at the Hennepin Canal Parkway looked into your problem and found that the ditch does need cleaning.

At this time the Canal does not have the proper equipment to clean ditches, but we do expect to purchase equipment in the near future and will put your request at the top of our priority list when we receive our equipment.

Thank you for your patience.

In **1973** and **1974** approximately **9.9** acres of land were under water and unavailable for planting. The evidence is that, in 1973, 9.9 acres of beans at **30** bushels to an acre were lost. The average price was **\$6.00** per bushel, or a total loss of **\$1,782.00**. The cost of raising the beans would have been **\$38.00** per acre of **\$376.20** for a net loss of **\$1,405.80**. In **1974** **9.9** acres of hay at **100** bales to an acre were lost. The average price per bale was **\$2.00**, or a total of **\$1,980.00**. The cost of raising the hay would have been **\$0.35** per bale or **\$346.50** for a net loss of **\$1,633.50**. Claimants' total net loss for both years was **\$3,039.30**.

This Court is frequently called upon to resolve cases where a public improvement has altered the natural flow of surface waters resulting in flood damage to adjacent property. A typical example is a highway built upon a fill, disrupting the flow of water from one side of the highway to the other.

The Illinois Mississippi Canal, when built, was in effect a public highway for the transportation of barge traffic from Hennepin to the Mississippi River. Its construction disrupted the natural drainage in the area concerned. The United States government however, by constructing the drainage facilities previously described, restored the drainage to its former condition and, ac-

cording to the record, maintained these facilities as recently as **1967**. The Respondent, State of Illinois, present owner of the canal, apparently refuses to keep these drainage structures in repair, taking the position that it has no legal obligation to do so, and that Claimants are free to go upon the State's right-of-way and make the repairs themselves.

The Court does not agree with the State's position. To our knowledge there are no decisions of this or any other court directing citizens (who own property adjacent to a public improvements) to go upon the State's right-of-way and privately maintain drainage facilities found on the public improvement. For reasons of safety, both public and private, if for no other reasons, private citizens should not enter upon the State's right-of-ways and attempt to perform maintenance functions.

By its letter to Claimants in July of **1972**, the State acknowledged its responsibility to maintain the drainage installations but stated that at that moment it had no equipment to do the job. Tools needed would have been an auger to clean the tubes running under the canal and a back hoe to clean the south drainage ditch. Claimants could not be expected to own or to rent such items.

Respondent relies on *Savoie v. Town of Bourbonnais, et al.*, **339 Ill.App. 551**, an action against the Town of Bourbonnais, the County of Kankakee, and others for damages and a mandatory injunction to compel defendants to repair and maintain a drainage ditch which for more than **40** years had diverted waters from flooding plaintiffs land. The Circuit Court of Kankakee County dismissed the complaint, and the Appellate Court of Illinois Second District affirmed. However, the cited case is not on point. The plaintiff in *Savoie* was seeking

to establish an easement by prescription in a water course on the grounds that it had existed for more than 20 years. The Appellate Court held that, under the facts of the case, prescriptive rights could not be established against the municipality; and that even if they could, the municipality's only obligation to plaintiff and to others who had benefited from the drainage ditch was not to restore the original water course. This has no application to the instant case which involves the disruption of the natural flow of surface water by the construction of a public improvement.

Respondent further relies on the Illinois Drainage Code. That Act, pertaining to the creation and taxation of drainage districts, has no apparent application to the case at bar.

Claimants have proved damages in the amount of **\$3,039.30** arising from the State's negligent maintenance of its drainage facilities under and bordering the Illinois Mississippi Canal adjacent to Claimants' property.

Claimants are hereby awarded damages in the sum of Three Thousand Thirty-Nine and **30/100** Dollars (**\$3,039.30**).

(No. 75-12—Claimant awarded \$13,200.00.)

PULLEY FREIGHT LINES, **Inc., Claimant, vs. STATE OF ILLINOIS, Respondent.**

Opinion Fled June 14, 1977.

SHURL ROSMARIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

STIPULATION—overpayment of Vehicle Proration fees. Where Claimant and Respondent stipulate to facts and damages, an award will be entered

accordingly. An investigation by the Secretary of State determined that an overpayment of Vehicle Proration fees was made by Claimant.

PER CURIAM.

This claim coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for overpayment by Claimant of vehicle proration fees.

An investigation by the Secretary of State determined that an overpayment of Vehicle Proration fees was made by Claimant for the year 1970. After a pre-trial conference, the parties entered into a joint stipulation in the amount of **\$13,200.00** as a fair and just settlement of this claim in view of all the documents in their possession.

It is hereby ordered that the sum of Thirteen Thousand Two Hundred Dollars (**\$13,200.00**) be awarded to Claimant, Pulley Freight Lines, Inc., in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-223—Claimant awarded \$200.00.)

JAMES H. BLAKE, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed July 16, 1976.

WILLIAM A. BEAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **RICHARD J. GROSSMAN**, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—damage to property by escapees. State is liable for damages caused by escaped inmate only if it is negligent in allowing inmate to escape from custody.

DAMAGES—stipulation. Where Claimant and Respondent stipulated to facts and damages, an award will be entered accordingly.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by the Claimant to his motor vehicle when said vehicle was damaged by escapees from the Illinois Youth Center, St. Charles, Illinois, pursuant to Ill.Rev.Stat., Ch. 23, §4041. The vehicle in question was totally damaged by student Charles Day on May 31, 1974. Damages to Claimant's vehicle have been estimated at \$200.00 as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of Two Hundred Dollars (\$200.00) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-234—Claimant awarded \$2,032.33.)

ELLARD LEE DOUGLAS and JUDITH GRACE DOUGLAS, Claimants,
us. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,
 Respondent.

Opinion filed April 13, 1977.

DONALD C. RIKLI, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—damages. Where State breaches contract by not paying Claimant for property purchased within time specified in contract damages will be awarded that arise as the fair, legal, and natural result of the breach.

HOLDERMAN, J.

Claimants filed suit against the Respondent claiming a breach of contract relative to the sale of certain land by Claimants to Respondent.

During the year **1971**, Claimants were the owners of a house located upon land in East St. Louis, Illinois. During the fall of **1971**, persons representing the Department of Conservation of the State of Illinois, including one Roger H. Hazlett, visited the Claimants at their home and negotiated with them for the purpose of purchasing their home and land for the Horseshoe Lake State Park project.

The Claimants both state that Mr. Hazlett told them they would receive the purchase money for their home and land from four to six weeks after they executed their deed. Mr. Hazlett denies making such a statement.

On October **14, 1971**, Claimants executed their warranty deed to their home and land, delivered the same to Mr. Hazlett, and received a receipt for this warranty deed dated October **14, 1971**, and signed by Mr. Hazlett. This receipt stated that the agreed-upon consideration for the warranty deed, which was \$30,000.00, had not been paid but would be paid to the Claimants "in approximately 90 days after execution of the deed"

Claimants searched for another home, and on October **23, 1971**, entered into a contract to purchase another home. Under the terms of this contract, the closing was to be held on or before January **1, 1972**.

The purchase money for the Claimants' original house was not paid to them until April **21, 1972**, which was **190** days from the date of the execution and delivery of the warranty deed to their original home.

As a result of the delay of the Department of Conservation of the State of Illinois to pay Claimants for their original home Claimants were unable to raise enough money from other sources to complete the

purchase of their new home. During the period between October, 1971 to April, 1972, Claimant was out of work.

On February 23, 1972, the sellers under the contract for the new home sued the Claimants for damages for breach of contract. Claimants employed attorneys to defend them, and the case was settled out of court for **\$1,049.25**, plus loss of down payment under the contract of **\$100.00**.

Claimants allege that as a result of the failure of the Department of Conservation of the State of Illinois to pay to the Claimants the purchase price on the Claimants' original home (\$30,000.00) within the 4 to 6 weeks after delivery of the warranty deed as stated by both of the Claimants or within the 90 days as represented by the Respondent, the Claimants suffered the following damages:

Payment to George F. Becker and M. Jane Becker in settlement of Case No. 72-E-44 in the Circuit Court of Madison County, Illinois		\$1,049.25
Roberts, Sheppard, McRoberts & Wimmer, attorneys' fees..		350.00
Nick D. Vasileff, attorney's fee		25.00
Down payment on contract to purchase new home		100.00
.....		
Total.....		\$1,524.25

As a result of the foregoing, the Claimants have employed an attorney to represent them in this proceeding, and the agreed upon fee is one-third of the sum recovered, or \$508.08.

If the payment to Claimants had been made in accordance with the written receipt given by Roger H. Hazlett, they would have received the money on January 4, 1972, approximately six weeks before the suit was filed by the owners of the new home Claimants intended to purchase.

It is the opinion of this Court that the Claimants

sustained their loss as a result of the failure of the Respondent to make payment at the time agreed upon.

Damages recoverable in a case such as this should be those which arise as the fair, legal and natural result of the breach. *Howell us. Moores*, 127 Ill. 67, 19 NE. 863.

Award is hereby made for damages in the amount of Two Thousand Thirty-Two and 33/100 Dollars (\$2,032.33).

(No. 75-243—Claimant awarded \$1,553.25.)

MARTHA BRAZLEY, ADMINSTRATRIX OF THE ESTATE OF MAYDIS MONTGOMERY, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed March 14, 1977.

SEIBERT & DANIELS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD J. GROSSMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—duty of state to patients. State has obligation to exercise reasonable care in supervision and control over patients.

DAMAGES—stipulation. Where Claimant and Respondent stipulate to facts and damages, an award will be entered accordingly.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim seeks the sum of **\$1,553.25** representing the burial expenses incurred as a result of the death of Maydis Montgomery, a patient of the Department of Mental Health, Elgin State Hospital on January 1, 1974.

On the evening of January 1, 1974, decedent together with other patients was taken by an employee of

the hospital to dinner which required the patients to be taken outdoors from the building in which they were housed to a dining room about one-half block away.

At the time the decedent was taken to dinner there were four persons scheduled to be on duty, however two of these individuals had called in ill and did not report to work. Since department rules required at least one person to remain on a ward at all times, there was only one person available to escort some 45 patients to and from the dining room for dinner.

As a result of the foregoing conditions, Claimant's decedent was allowed to wander away from the group, off the grounds of the hospital, onto the highway. The facts disclose that she then stepped into the path of a moving automobile and was instantly killed.

Although Elgin State Hospital is not a custodial institution and therefore does not have a "closed gate" security system, there remains the fact that Respondent was aware of decedent's known tendency to wander away from groups traveling to and from meals. She had previously been found walking on the streets around the grounds of the institution.

The Department of Mental Health decided that it would be in the best interest of the State of Illinois that this claim be adjusted, and that the Claimant be reimbursed for the reasonable burial expenses which she incurred in providing the decedent with a proper burial.

Pursuant to the Department's request for an adjustment, a stipulation was prepared and sent to the Court, whereby it appears that all matters in controversy between Claimant and the State of Illinois have been adjusted to the mutual satisfaction of the parties and their attorneys and that the expenses incurred are just and reasonable.

Claimant is hereby awarded the sum of One Thousand Five Hundred Fifty-Three and 25/100 Dollars (\$1,553.25).

(No. 75-371—Claimant awarded \$456.00.)

WILSON ELECTRIC COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 27, 1976.

WILSON ELECTRIC COMPANY, Pro se.

WILLIAM J. SCOW, Attorney General; JERRY FELTS-
SENTHAL, Assistant Attorney General, for Respondent.

CONTRACTS—apparent authority. Where the State vests a person with apparent authority to order services, Claimant reasonably relied upon his apparent authority to bind the State, and Claimant performed the services, the State cannot deny that the person had actual authority to bind the State.

POLOS, C. J.

This is an action to recover the sum of \$456.00 for sound system maintenance work at the Dixon State School. Respondent admits that the work was satisfactorily performed by Claimant but contends that Claimant was never properly authorized to do the work in question.

In early 1973, Claimant, acting as a subcontractor, installed a sound system at Dixon State School at Dixon, Illinois. The sound system was covered by a one-year warranty against equipment malfunction.

On July 10, 1973, Warren Kalies, the Secretary-Treasurer of Wilson Electric Company, had a telephone conversation with one Bob Hollenback, an Electrical Inspector for the Department of General Services of the State of Illinois. Kalies testified that Hollenback advised him that Dixon State School was experiencing

difficulty with its sound system and asked Claimant to service it.

Harold Nelson and Richard Pierson, both employees of Claimant, were dispatched to the Dixon State School. Nelson testified that upon their arrival they reported to one Earl Sitter, the Chief Engineer at the School. Nelson said that Sitter told him and Pierson to contact Ray Rogers, a School electrician, who would tell them what needed to be corrected in the system.

Nelson and Pierson were taken through the School by Rogers. Nelson said that in addition to adjustments covered under Claimant's warranty, Rogers requested that they adjust the sound levels on **48** amplifiers and that they repair certain broken controls and electrical lines that had been damaged by inmates. In addition to the work covered under the warranty, Nelson and Pierson performed the added work that Rogers requested. Respondent was billed **\$456** for the non-warranty work.

Earl Sitter, testifying for Respondent, said that he had not authorized Claimant to perform the non-warranty work. **He** admitted on cross-examination however, that he had told Harold Nelson to contact Ray Rogers in order to learn what work he was to do on the sound system.

The sole issue to be determined is whether Respondent authorized Claimant to perform work on the Dixon State School sound system not covered under the warranty. **It** is clear that Claimant adjusted the sound level on **48** amplifiers at the School and replaced controls and electrical lines which had been damaged by inmates, and that these services were not covered under Claimant's warranty. It is also clear that Earl Sitter, the Chief Engineer at Dixon, told Claimant's employees that Ray Rogers would show them the work to be done on the

sound system and that Rogers asked Claimant's employees to perform the non-warranty work.

We think that the State thus vested Ray Rogers with apparent authority to order the non-warranty work on the sound system and that Claimant reasonably relied upon his apparent authority to bind the State in performing the work. Claimant's employees did only the work requested by Rogers, and in these circumstances the State cannot now complain that Rogers did not have actual authority to bind the State.

Claimant is therefore awarded the sum of Four Hundred Fifty-Six Dollars (\$456.00).

(No. 75-550—Claim denied.)

IRVING WEISSMAN, M.D., Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed June 13, 1977.

PRACTICE AND PROCEDURE—*when cause of action accrues.* Where no departmental denial of liability is possible because no claim has been presented, the cause of action nevertheless accrues even if Claimant never makes a claim.

SPIVACK, J.

This matter is now before the Court on Respondent's Motion to Dismiss and Claimant's Answer thereto; the parties have each filed briefs and arguments in support of their respective positions; the pleadings, briefs and applicable statutes and regulations have been carefully examined by the Court. In order to properly understand our adjudication of the novel situation herein presented, it is necessary to recapitulate the applicable facts: Claimant, a physician, was a participant in the Medical Assistance Program of the Illinois

Department of Public Aid and rendered services to recipients during the year **1969** in the amount of **\$24,820.10**. On March **22, 1971**, the Director of the Department of Public Aid informed Claimant: (i) that he was being removed from further participation in the program (for reasons not here relevant), and (ii) that all unpaid bills that had theretofore been submitted would be paid in accordance with Departmental policy and standards. In early **1974** Claimant first submitted the **1969** bills for payment which were, on April **11, 1974**, denied in writing by the Department for the given reason that Federal regulations preclude expenditures of any Medicaid funds for any bill submitted more than **24** months following the date service was provided. Thereupon, on November **25, 1974**, Claimant filed the instant cause.

Respondent argues that §22(b), Court of Claims Act, required this Claimant to file his action within one year following “the accrual of the cause of action,” as provided in Ill.Rev.Stat., Ch. **23**, §11-13. The statutory language is clear and concise, and we agree with the Respondent in this regard. Respondent next contends that the cause of action “accrued” on March **22, 1971**, the date as of which the Department informed Claimant that it would honor his unpaid bills submitted as of that date. We are not convinced by Respondent’s argument. The letter of March **22, 1971**, addresses itself to the issue of unpaid bills already submitted, payment of which had been withheld pending the outcome of the administrative proceedings. The question of outstanding bills for a period during which Claimant was a participant in the program, but which had not been submitted, was never an issue in the proceedings and was not inferentially disposed in said letter.

Claimant argues that the "cause of action accrued" on April **11, 1974**, the date of the Department's denial of the **1969** bills which had been submitted early in **1974**. For support, he cites Ill. Ann. Stat., Ch. **23**, §**11-13** as amended, effective January **1, 1973**. The section states:

A cause of action does not accrue within the meaning of this paragraph for as long as there is an unrevoked acknowledgment in writing by a governmental unit or the Illinois Department that it accepts the liability, in whole or in part, for a vendor claim submitted to it or, if the vendor claim or any part thereof is not so acknowledged, until the vendor has been notified in writing that the claim or part thereof is disallowed or disapproved.

Although superficially it may seem that the quoted section supports Claimant's position, a closer examination indicates that the section is silent in respect of a precise situation as is here presented. Namely, where no departmental denial of liability is possible because no claim has been presented. We doubt that the Claimant seriously contends that the cause never accrues if Claimant never makes a claim.

We must therefore look further to determine the legislative intent with regard to when the cause of action does accrue as related to the date upon which the services were rendered.

The penultimate paragraph provides the key:

This paragraph governs only vendor payments as defined in this Code and as limited by regulations of the Illinois Department.

Neither counsel for Claimant nor for Respondent has made reference to the Regulations of the Department of Public Aid which became the key to the establishment of the date upon which the cause accrues relative to the date of services rendered. The Court however takes notice of the Regulation entitled "State of Illinois, Department of Public Aid, Medical Assistance Program, Handbook for Physicians." Section **141**, Sub-*mittal* of *Charges*, provides as follows and is dispositive of the issue:

Charges are to be billed as soon as possible after the first of the month following the month in which services were provided; but not later than six months subsequent to date of service. Only those claims which are received by the Department with a date of service within six months prior to the date received will be considered for payment.

Thus in the instant case the cause of action could not have accrued later than six months following the respective date of services and Claimant was bound to have filed this cause by no later than June 30, 1970. This he failed to do.

For the foregoing reasons, Respondent's Motion to Dismiss is granted and the cause dismissed.

(No. 75-461 — Claimant awarded \$118.50.)

MARY H. (ABEL) PIERCE, Claimant, *us.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed July 16, 1976.

MARY H. (ABEL) PIERCE, Pro se.

WILLIAM J. SCOTT, Attorney General; **RICHARD J. GROSSMAN**, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—damages to property by escapees. State is liable for damages caused by escaped inmates only if it is negligent in allowing inmate to escape from custody.

DAMAGES—stipulation. Where Claimant and Respondent stipulate to facts and damages, an award will be entered accordingly.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises:

This Court finds that this claim is for damages sustained by the Claimant to her motor vehicle when said vehicle was stolen by escapees from the Illinois Youth Center, St. Charles, Illinois, pursuant to Ill.Rev.Stat., Ch. 23, ~~\$4041~~. The vehicle in question was

stolen by students Lowell Wilkins and Raymond Green on July 4, 1974. Damages to Claimant's vehicle have been estimated at **\$118.50**, as substantiated by exhibits attached to Claimant's complaint.

It is hereby ordered that the sum of One Hundred Eighteen Dollars and **50/100 (\$118.50)** be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 75-578—Claimant awarded \$600.00.)

GLORIA BRIGGS, Claimant, *us.* **STATE OF ILLINOIS**, Respondent.

Opinion filed September 23, 1976.

GLORIA BRIGGS, Pro se.

WILLIAM J. SCOTT, Attorney General; **RICHARD GROSSMAN**, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—damage to property by escapees. State is liable for damages caused by escaped inmates only if it is negligent in allowing inmate to escape from custody.

SAME—negligence. Past record of escapes by an inmate serves as notice on the State that he was one who would be prone to escape.

NEGLIGENCE—contributory negligence. Claimant was not contributorily negligent to damages caused by escaped inmate even if she was in some way responsible for her car being parked with the keys in it because it was parked on private property 100 yards off the highway in a private parking lot in front of her townhouse.

HOLDERMAN, J.

This is a claim for damages for the theft of an automobile by an inmate escaped from the Illinois Youth Center, St. Charles, Illinois.

On October 5, 1974, Claimant was the owner of a **1966 Ford Galaxie XL** automobile. This car was parked on the premises of the Marion Park Housing Complex in

the County of DuPage, State of Illinois, in front of the family's townhouse at **2120** West Roosevelt Road, Wheaton, Illinois.

The automobile was not parked on a public street but was on a private parking complex used by the people living in the immediate vicinity. As a tenant of the town house, Claimant had a parking space which was located about **20** feet in front of her front door.

The car had been parked by Claimant's husband at approximately **11:00** p.m. on October **5, 1974**. At about **7:55** p.m. on October **5, 1974**, one Thomas Leach, **13** years old, an inmate of the Illinois Youth Center, escaped from the Center with another inmate. They broke a lock on a door and climbed through a second story window. Leach had a record of prior escapes from the Center. After escaping, the two inmates split up.

Some time during the morning of October **6, 1974**, Leach stole the Claimant's car from its parking place. At about **9:00** a.m. of the same day, he was involved in a collision at the intersection of Montrose and Kenzie in Chicago at which time the car was totally wrecked. The car was towed to a city vehicle pound.

Mrs. Briggs did not know her car had been stolen until she was notified later that morning by the Wheaton Police Department that it had been in an accident in Chicago.

There is a direct conflict as to whether or not the ignition key was in the car at the time it was stolen.

Mr. Briggs testified that when he parked the car, he took the keys out of the ignition and put them in his pocket. His wife testified that she had not left keys in the car, that they had only two sets, and they had not had any additional keys made. She produced both sets of keys in Court.

Leach's affidavit was admitted into evidence by agreement of the parties and contained the following two statements:

I entered the vehicle through an unlocked door. I started it with the keys that were on the floor shift console.

The Chicago Police Department Vehicle Tow Report shows keys in the ignition and the Vehicle Inventory Report is stamped ***Keys in Office.***

The State contends that Claimant was negligent in that the keys were left in the car.

This Court has repeatedly held that prior to recovery for damages caused by a State inmate, Claimant must prove that such inmate escaped from the institution over which the State had control, and that the inmate caused the damage while at liberty.

It is clear that in this case the escapee, Thomas Leach, had escaped from an institution on one or more occasions in the past which would serve notice on the State that he was an individual who would be prone to escape, and there is no question from the record that he stole the car. While it is true that it is Claimant's burden to prove negligence by a preponderance of the evidence, the failure of the State to introduce any evidence to rebut the prima facie case causes the prima facie case to stand.

As stated in Elgin Salvage and Supply Company, Inc. vs. State of Illinois, 26 Ill.Ct.Cl. 278:

It is the opinion of the Court that the evidence offered by Claimant is sufficient to establish a prima facie case of negligence on the part of Respondent. Berdine, in view of his past record, should have been kept under greater surveillance than the ordinary inmate. The evidence does not indicate that Respondent took any special steps to prevent his escape, even though the record indicated prior escapes.

Respondent offered no testimony on the point. The facts pertaining to the surveillance and escape of the inmate were in the exclusive control of Respondent, and leave the implication that said evidence would have been presented had the same been favorable to Respondent.

Similar language appears in various of the Court of Claims cases arising under the act pertaining to theft or damage by escaped inmates. See: *U.S. Fidelity and Guaranty Company, a Corporation, vs. State of Illinois*, 23 Ill.Ct.Cl. 188; *Redebaugh vs. State of Illinois*, 22 Ill.Ct.Cl. 306; *Finch vs. State of Illinois*, 22 Ill.Ct.Cl. 376; *Poleet, et al. vs. State of Illinois*, No. 6173.

The question is whether or not the Claimant is free from contributory negligence by leaving the keys in the car, and this question has been cited many times in the past by this Court.

The escapee made the statement that "I started it with the keys that were on the floor shift console." If the keys were in the car, they were left there by Mr. Briggs, who is not the owner of the car but was the last person to use the car.

If his act was negligent, Mrs. Briggs would not be bound by any such act of negligence unless she had somehow authorized it or unless such negligence was the sole proximate cause of the loss of the car:

It is clear from the rulings of this Court and from the rulings of the Appellate Courts of Illinois, that Sec. 11-1401 of the Illinois Motor Vehicle Code is irrelevant to *key in car* cases unless the vehicle is parked on a public highway. A prima facie case of negligence from violation of the Illinois Motor Vehicle Code arises only when the vehicle is parked on the public highway. Here the vehicle was not parked on the public highway, so the statute has no application.

However, as pointed out by Respondent in its brief, the question of contributory negligence *as an issue of fact* is present in any case where a vehicle is left unlocked, unattended, and with the ignition keys in the *car*, even when parked on private property.

The Court of Claims has considered this factual issue in a wide variety of factual situations. The fact situations previously passed on by the Court can be found in the following cases:

Fuller us. State, Ill.Ct.Cl. 14. Car parked by employee in the parking lot of the store where he worked. Parking area in the front of the store.

Spear us. State, 26 Ill.Ct.Cl. 32. Car parked under implement shed on grounds of Morris Country Club.

Castoro us. State, 26 Ill.Ct.Cl. 468. Car parked in a private parking lot adjacent to employer's place of business.

Kendrick us. State, 26 Ill.Ct.Cl. 471. Car parked in a private parking area parallel to the street and about 40 feet from Claimant's home.

Kent us. State, 24 Ill.Ct.Cl. 321. Car parked in garage in home.

U.S. Fidelity and Guaranty Co. us. State, 23 Ill.Ct.Cl. 188. Car parked in driveway of home.

In none of the above cases was the Claimant found to be guilty of contributory negligence. In most of the above cases, the general public had ready access to the site where the car was parked. In some of the cases above, the car was parked much closer to the highway than in the instant case. In the opinion of the Court, the Claimant was not guilty of contributory negligence, even if she was in some way responsible for her car being parked with the keys in it because it was parked on private property 100 yards off the highway in a private parking lot in front of her own townhouse.

The best testimony as to the amount of damages suffered by Claimant as a result of said occurrence would have been expert opinion testimony as to the market value of the car at the time it was stolen and destroyed. This testimony is generally given by persons engaged in the business of selling or repairing automobiles.

However, the record is not totally devoid of elements of proof from which a determination of damages can be made.

The record discloses that Claimant paid \$400.00 for the car on or about July 1, 1974, that on or about July 10, 1974, they paid an additional \$400.00 for a new engine, and they also paid \$20.00 for a radiator and \$40.00 for tires. Their cash investment in the car three months before the occurrence was approximately \$860.00.

Interviewed by a member of the Wheaton Police Department when that Department was preparing a Vehicle Theft Case Report, Claimant and her husband acknowledged that they placed a value of \$600.00 on the car. It is unfortunate that expert testimony as to the exact value of the car was not introduced into evidence, but there is sufficient evidence on which to base a finding.

It appearing to the Court that the fair market value of the automobile at the time of the occurrence was \$600.00, an award is hereby entered in favor of Claimant in that amount.

(No. 75-554—Claimant awarded \$6,481.00.)

GEORGE J. KUTSELAS, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed July 28, 1978.

RICHARD MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **JEROME FELSANTHAL**, Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY AWARDS—A state employee wrongfully discharged where a job which was abolished had been replaced with substantially the same job is entitled to an award for back salary based on the same rate he would have received had he not been discharged, including increments accruing during period of wrongful discharge, less a setoff of amounts earned in mitigation of damages.

CIVIL SERVICE Am—duty to mitigate damages. The burden of proving earnings to mitigate loss of salary is on the State.

HOLDERMAN, J.

In his complaint, Claimant seeks an allowance for back salary for the period of time from July **1, 1969**, to August **1, 1971**, under the following facts:

Claimant had been employed by State of Illinois Department of Revenue performing duties as Revenue Inspector III. On January **21, 1969**, he had reached pay schedule referred to as Step **5** for the position. This amounted to **\$675** a month.

On January **21, 1969**, he was laid off from his position for alleged "lack of work resulting from a material change in organization."

On July **1, 1969**, the Director of Revenue created positions entitled "Revenue Collection Officers I, II, and III." The duties of Revenue Collection Officer I, as created July **1, 1969**, involved substantially the same duties as Claimant performed formerly as Revenue Inspector III.

On November **26, 1969**, Claimant filed an Intervening Complaint for Declaratory Judgment in a case pending in the Circuit Court of Cook County. He asked the Court to reinstate him to his former position and for payment of back salary for the period of time which he claimed was an illegal layoff. On May **22, 1974**, the Circuit Court found that the position of Revenue Collection Officer **III**, formerly occupied by Claimant, was the same position as Revenue Collection Officer I in the Department of Revenue, as created July **1, 1969**. The Court further found that the Claimant was to be reinstated with full service status and with full credit for seniority, pension and all other purposes from the time of the original appointment as Revenue Collection Officer III, except for the period of time of his layoff in January, **1969**, to July **1, 1969**. The Court further or-

dered that the reinstatement was without prejudice of Claimant's right to file suit in the Court of Claims for any back salary.

It was agreed that Claimant is entitled to compensation from July 1, 1969, to August 1, 1971, but the amount is in dispute. It was further agreed that Claimant's outside earnings for this period were \$13,486, and that this should be set off from any salary he was entitled to.

The Claimant argues that the correct monthly salary from July 1, 1969, was \$778 a month, being the rate for Step 5.

Respondent contends that the proper monthly rate was \$625, being the rate for Step 1 at that time.

When Claimant was laid off in January, 1969, he was receiving \$675 a month, being the rate at Step 5 for his position.

If Claimant is correct, he is entitled to \$6,481. If Respondent is correct, Claimant is entitled to \$3,114. This assumes also that the record is clear that the correct set off is \$13,486.

The whole dispute resolves itself in the one question: Was Claimant entitled to a Step 5 rate from July 1, 1969, or was he limited to a Step 1 rate?

The State argues that to determine the salary at Step 5 rate of \$778 a month from July 1, 1969, would be tantamount to an increase of \$103 over what he was making in January of 1969 when laid off. Further, it argues that upon the creation of the posts of Revenue Collection Officers on July 1, 1969, the majority of persons hired were employed at \$625 per month, which was the Step 1 rate.

Claimant argues that the Circuit Court had held that Claimant was entitled to be reinstated under the title of Revenue Collection Officer I on July **1, 1969**. He further points out that the salary for Step **5** for Revenue Collection Officer I was **\$778**, as appears in the pay plan introduced in evidence; that the pay plan provided for a certain increase effective September **1, 1970**; that therefore his back salary should be figured at **\$778** a month starting July, **1969**, to September, **1970**, and at the rate of **\$825** a month from September **1, 1970**, to August **1, 1971**, the cut-off date of his claim.

Under the position taken by Respondent, Claimant would be compelled to take a reduction in salary upon his reinstatement since he was making **\$675** a month when laid off and the pay for Step **1** after **July 1, 1969**, was only **\$625** a month.

Witness John E. Cooke, employed as a Personnel Analyst for the Department of Personnel, State of Illinois, testified that there was actually nothing specifically in the pay plan which covered a situation where a Court held that where one job was presumably abolished it was not actually in effect abolished but was continued on under a new title. He further testified that if Claimant left in good standing and was reinstated, that his reinstatement would be to his comparable step regardless of what the salary would be.

Ultimately the issue is whether the old job was reestablished or whether a new job was created.

Our position is, based on the record before us, that since the duties of the new job and the old job were substantially the same, as the Court held, that the new job was a re-creation of the old job. Therefore, Claimant is entitled to a Step **5** rate of **\$778** a month starting July **1, 1969**, with increases effective thereafter.

Respondent also argued that Claimant had a duty to mitigate his damages and that he failed to prove mitigation completely.

It has been held that when an employee is wrongfully discharged, in his suit for back salary the burden of proving earnings to mitigate the loss of salary is on the State. See *People v. Johnson*, 32 Ill.2d 324; 205 N.E.2d 470,473.

The proof in this case established that the Claimant had earned \$13,486 as outside earnings during the period of his layoff. Deducting this from \$19,967, the total lost salary at Step 5 rate, leaves a balance due him for back salary of \$6,481.

The Court was advised by its Commissioner, who heard the evidence that the Claimant "was not paying Social Security at the time of his termination; that he no longer desires to be employed by the State; and that no further consideration should be made at this time regarding his pension contributions."

Claimant is hereby awarded the sum of Six Thousand Four Hundred Eighty-One Dollars (\$6,481.00) in payment of back salary, and said award will be subject to any and all Federal income tax and State income tax deductions.

(No. 75-770—Claimant awarded \$39,879.36.)

JOHN A. STEVENS, **Claimant**, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed June 8, 1977.

CONKLIN, **LEAHY & EISENBERG**, by DANIEL J. LEAHY,
Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES STOLA, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—*duty to mitigate damages.* During period of illegal removal from office, Claimant must diligently seek employment and do all in his power to mitigate damages.

DAMAGES—*interest on awards.* Ill.Rev.Stat., Ch. 74, Par. 2 has no applicability to claims against the State.

POLOS, C. J.

Claimant John A. Stevens has brought this action to recover back wages allegedly due him for the period during which he was discharged by the Illinois Bureau of Investigation.

It appears that on July 27, 1971, Claimant was discharged from his position as a squad leader with the Illinois Bureau of Investigation after being suspended on June 23, 1971. He demanded a hearing before the Civil Service Commission on July 10, 1971, which hearing was held in September, 1971. On December 8, 1971 the Civil Service Commission entered an order discharging Claimant from the Illinois Bureau of Investigation.

Claimant appealed that ruling to the Circuit Court of Cook County. On July 6, 1972, the Honorable Edward Healy entered an order directing that Claimant be reinstated to his last held position with the Illinois Bureau of Investigation. That order was appealed by Respondent to the Illinois Appellate Court which on April 11, 1974, affirmed the order of the Circuit Court. Thereafter, Respondent filed a petition for leave to appeal to the Illinois Supreme Court, but leave to appeal was denied on or about September 27, 1974.

Claimant was reinstated to his former position with the Illinois Bureau of Investigation on November 1, 1974.

Claimant seeks the sum of **\$39,879.36** in damages, representing the back salary he would have earned less monies he actually earned from other sources during the period of his discharge. Claimant also seeks an award of interest on the amount of his claim.

Respondent has stipulated that the sum of **\$39,879.36** is the amount of Claimant's back salary, less amounts earned by him during the period of his discharge. Respondent contends, however, that Claimant did not do all in his power to mitigate his damages, and that this Court is without jurisdiction to award interest on Claimant's recovery.

The hearing herein was accordingly limited solely to the question of whether Claimant properly mitigated his damages. Claimant testified that he had extensive administrative experience in law enforcement, particularly in narcotics work. He had been employed by the Illinois Bureau of Investigation until July, **1971**, when he was suspended and was subsequently reinstated on November **1, 1974**.

Claimant testified that he was unemployed from July, **1971**, to December **31, 1971**, and had not sought employment during that period. In January, **1972**, he contacted an employment agency called "Executive Careers Incorporated" but did not retain the **firm** because they wanted \$1,500 as an application fee. He then went to another employment agency called "Interviewing Dynamics, Incorporated" and paid them a fee of \$500 as a retainer. He said that the agency mailed one hundred copies of his resume to various companies and placed an ad for him in the Wall Street Journal. He received no response to his resumes or the ad.

On April **17, 1972**, he applied without success for jobs with Oak Security Company in Milwaukee, Wisconsin.

sin, and Xerox Corporation. In July, 1972, Claimant unsuccessfully applied for teaching positions in the law enforcement programs at the University of Illinois and Joliet Junior College. He said he was denied a position at Joliet Junior College because he was under suspension from his job with the Illinois Bureau of Investigation.

In July, 1972, Claimant worked as an investigator for a law firm on a per diem basis, earning \$625. In August, 1972, he went to work for J & R Security Co. of Joliet, Illinois, earning \$1.90 per hour as a security guard. He worked there until October 30, 1972, when he took a job with a detective agency. He remained with the detective agency for a period and then worked on a series of security jobs until he was reinstated by the Illinois Bureau of Investigation in November, 1974.

Claimant further said that he thought his inability to find employment was connected with his suspension which had been publicized in the newspaper. He further testified that Mitchell Ware, the head of the I.B.I., had told him at the time of his suspension that he would see to it that Claimant never again got a job in law enforcement.

This Court has long held that a Civil Service employee who is wrongfully discharged and subsequently reinstated to the position by a court of competent jurisdiction is entitled to receive the salary he would have received were it not for the wrongful discharge. *Ryan v. State*, 26 Ill.Ct.Cl. 117. We have also held however that in such a case the Claimant must do all in his power to mitigate his damages and if he has not done so, it is the function of the Court of Claims to determine the reasonable amount of the damages which should have been mitigated. *Stephanites v. State*, 22 Ill.Ct.Cl. 453.

We think that Claimant did all that he reasonably could have done to mitigate his damages during the period of his discharge. Claimant received a written opinion from the Civil Service Commission on January 4, 1972, dated December 8, 1971, discharging him from the I.B.I. Thereafter he worked at numerous jobs and made continuous efforts to obtain employment. The Court feels that he acted properly and in good faith to mitigate his damages.

Claimant contends that he should be awarded interest on his award at the rate of 5% per annum, pursuant to Ill.Rev.Stat., Ch. 74, §2, which provides:

Creditors shall be allowed to receive at the rate of (5)per centum per annum for all moneys after they become due on any bond, bill, promissory note, or other instrument of writing; on money lent or advance for the use of another; on money due on the settlement of account from the day of liquidating accounts between the parties and ascertaining the balance; on money received to the use of another and retained without the owner's knowledge; and on money withheld by an unreasonable and vexatious delay of payment.

We do not consider the foregoing statute to have any applicability to claims against the State. Claimant's request for an award of interest is therefore denied.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of Thirty-Nine Thousand Eight Hundred Seventy-Nine and 36/100 Dollars (\$39,879.36) subject to the appropriate deductions and contributions for Social Security, retirement fund and withholding tax payments.

(No. 75-1035—Claimant awarded \$1,301.17.)

TEXACO, INCORPORATED, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed September 22, 1976.

GREGORY S. MURRAY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where Claimant and Respondent stipulate to the facts and damages, an award will be entered accordingly.

SAME—evidence. Evidence indicated that a security interest held by Claimant was superior to State's lien and assessment.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the recovery of the proceeds of a security interest held by Claimant in an inventory of Robert Cordtz that the Department of Revenue attached (pursuant to the State's **lien** and assessment **B-32326**) for Cordtz's failure to pay **\$2,561.70** in back taxes. An investigation of this claim by the Department of Revenue and substantiated by the files of the Secretary of State determined that Claimant's security interest of **\$1,301.17** was superior to the State's lien. The investigation further disclosed that Claimant's priority interest was pursuant to the Uniform Commercial Code, Ill.Rev.Stat., Ch. 26, §1-101 *et. seq.*

It is hereby ordered that the sum of One Thousand Three Hundred One and 17/100 Dollars (**\$1,301.17**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 75-1040—Claimant awarded \$716.75.)

CHARLES J. KOLKER, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 21, 1977.

CHARLES J. KOLKER, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

SERVICES RENDERE—payment *in* absence of appropriation. State is forbidden to incur debts in excess of money appropriated unless expressly authorized by law.

SAME—evidence. Evidence indicated the Illinois Fair Employment Practices Commission was unable to pay Claimant's billing for services rendered as a hearing examiner because the volume of complaints filed with the Commission rendered the appropriation made for that purpose inadequate.

POLOS, C. J.

Claimant Charles J. Kolker and Respondent have asked the Court to rule on this case on the basis of a joint stipulation of facts and the departmental report herein. The Claimant is a licensed attorney, who had rendered services to the Illinois Fair Employment Practices Commission as a hearing examiner. The Illinois Fair Employment Practices Commission was unable to pay Claimant's billing for services rendered because the volume of complaints filed with the Commission rendered the appropriation made for that purpose inadequate. The State recognizes the validity of this claim, but questions whether it may be paid in view of the absence of an unexpended portion of any appropriation at the time it was incurred.

Although the Constitution of 1870 has now been superceded, and the instant claim arose subsequent to the effective date of the Constitution of 1970, the decisions interpreting Article IV, Sec. 19 of the Constitution of 1870 are still pertinent in view of the essential similarity of that provision with Ill.Rev.Stat., Ch. 127, 0166 which is still in full force and effect. Both forbid the State to incur debts in excess of money appropriated unless expressly authorized by law:

The General Assembly shall never grant or authorize extra compensation, fee or allowance to any public officer, agent, servant or contractor, after

service has been rendered or a contract made, or authorize the payment of any claim, or part thereof, hereafter created against the State under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void; *provided*, the General Assembly may make appropriations for expenditures incurred in suppressing insurrection or repelling invasion. Art. IV, Sec. 19, Constitution of Illinois 1870.

No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law. Ill.Rev.Stat., Ch. 127, 8166.

The leading cases on the question of whether an expenditure may be honored in excess of an appropriation are *Fergus v. Brady*, 277 Ill. 272; and *Board of School Inspectors of the City of Peoria v. State*, 12 Ill.Ct.Cl. 17.

The following quotation from *Fergus v. Brady*, is particularly appropriate to the question of when an expenditure is "expressly authorized by law":

In Sec. 19, claims under an agreement or contract made by express authority of law are excepted, and if there is some particular and specific thing which an officer, board or agency of the state is required to do, the performance of the duty is expressly authorized by law. That authority is express which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly, with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois Penitentiary which had been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, feed, clothe and guard prisoners convicted of crime and placed in their care, involving the expenditure of money which may vary on account of the cost of clothing, food and labor beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates. *Fergus v. Brady*, 277 Ill. 272, at 279.

Board of School Inspectors v. State involved a suit by the City of Peoria for reimbursement of expenses incurred in the education of crippled children. The City had incurred the expenses after the Illinois Legislature

enacted a statute providing for reimbursement of the expenses incurred by school districts or others in the education of crippled children. In passing the statute the legislature provided for \$100,000 to defray this expense, but the response was so overwhelming that the expenses of the various school districts far exceeded the \$100,000. The claims of the various school districts were prorated, and the City of Peoria brought suit for the excess over and above their prorated share. The Court, citing *Fergus v. Brady*, held that the City of Peoria had no claim to any further reimbursement as the expenditure was not one “expressly authorized by law” in that it was not compulsory that the counties provide the education for these crippled children. The Court pointed out that many school districts throughout the State did not choose to participate in the program.

It is inherent in the administration of State government that expenditures should not exceed appropriations. Only where the spending agency is compelled by circumstances and law to obligate the State can an obligation in excess of any appropriation be honored. Without strict and well enforced guidelines, the spending of State officials could become rampant.

The drafters of the Constitution of 1970 were fully cognizant of this situation when they drafted Article VIII, Sec. 1. They provided two requisites for spending public funds: it must be for a “public purpose,” and it must be “only as authorized by law”:

Section 1. General provisions

(a) **Public funds, property or credit shall be used only for public purpose.**

(b) **The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance.**

Further Ill.Rev.Stat., Ch. 127, **8166** remains in full force and effect and retains the restrictive phrase “expressly authorized by law.”

Thus, the issue before us is whether the expenditures of the Fair Employment Practices Commission for hearings and records thereof, were absolutely or expressly required by law. Was the obligation analogous to the situation where the prison officials had no choice but to feed, clothe and house the prisoners assigned to their care?

We conclude, after a careful reading of the Fair Employment Practices Act, Ill.Rev.Stat., Ch. 48, §851, *et. seq.*, that the Commission was required by law to provide hearings for complainants and was thus required by law to make the expenditure which is the subject of this action. The instant expenditure therefore comes within the narrow exception delineated in *Fergus v. Brady*.

Claimant Charles J. Kolker is therefore awarded the sum of Seven Hundred Sixteen and 75/100 Dollars (\$716.75).

(No. 75-1244—Claimant awarded \$500.24.)

**STEPHEN T. SKERTICH, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed July 16, 1976.

STEPHEN T. SKERTICH, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY AWARDS—administrative errors. Where failure to pay an employee the appropriate rate is due solely to an administrative error on the part of the agency involved, the State cannot take advantage of its own error and deny recovery.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that the subject of this claim is the correction of an administrative oversight in the failure of the Department of Public Aid to pay the Claimant a five per cent (5%) shift differential for working as a Computer Production Controller II on a work shift other than the routine 8:30 a.m. to 5:00 p.m. work day.

The rules of the Department of Public Aid at the time the services were rendered provided for a shift differential pay of five per cent, but because of a clerical error the shift differential was not paid to Mr. Skertich, but it was paid to all others working the same shift with Mr. Skertich.

The Stipulation was entered into pursuant to this Court's previous holdings in the cases of *Retta Mae Allen, No. 7048*, *Donald W. Vickers, No. 7036*, *Curtiss Anderson, No. 6700*, and *Puskus, 26 Ill.Ct.Cl. 107*, wherein each case the Court held that inasmuch as the failure to pay the employee the appropriate rate of pay was due solely to an administrative error on the part of the agency involved, the State could not take advantage of its own error and deny the recovery.

Except for the administrative error above explained, the sole reason that this claim was not previously paid is due to the lapse of the appropriation, the same having been confirmed by the Department of Public Aid, a copy of the report is attached to the Joint Stipulation of the parties. Said departmental report indicates that Mr. Skertich is due the amount of **\$444.46**.

We find that the Claimant is due the amount of **\$444.46** in gross salary, plus employer contributions of **\$55.78**, for a total employee benefit of **\$500.24** which should be disbursed by the Comptroller and credited as follows:

To the State Employees Retirement System as follows:

\$ 17.78 Employee's contribution to State Employees Retirement System

\$ 26.00 Employee's contribution to F.I.C.A.

\$ 29.78 State's contribution to State Employees Retirement System

\$ 26.00 State's contribution to F.I.C.A.

To the Illinois State Treasurer to be remitted to the Internal Revenue Service:

\$ 39.88 Claimant's Federal Income tax withholding for current taxable year.

To the Illinois Department of Revenue, Income Tax Division:

\$ 6.94 Claimant's Illinois Income tax withholding for current taxable year.

To the Claimant:

\$ 353.86 Claimant's net salary after all of the above contributions and withholdings have been deducted from the above total employee benefit.

It is therefore ordered that Claimant be and is hereby awarded the total employee benefit of Five Hundred and 24/100 Dollars (**\$500.24**) to be disbursed and credited in accordance with our above finding.

(No. 75-1226—Claimant awarded \$10,324.15.)

ROBERT W. GENTY, Claimant, *vs.* **STATE OF ILLINOIS**,
Respondent.

Opinion filed August 6, 1976.

ARTHUR J. O'DONNELL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MELBOURNE A. NOEL, JR., Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY AWARDS—*vacation benefits*. Unless stipulated to by the parties, no award will be given for vacation time or accumulated work days.

HOLDERMAN, J.

Claimant filed a claim for **\$20,252.40** for salary alleged to be due him during the time of his suspension from duty as an Illinois State Trooper from December **9, 1972**, to and including August **21, 1974**.

The amended complaint sought an additional sum of **\$1,080.00** as compensation for vacation and holiday allowances he had not received, and Claimant seeks to subtract this amount from his earnings made in outside employment during the time he was suspended.

A stipulation was entered into by the parties hereto, which stipulation is as follows:

It is hereby stipulated and agreed by and between Dwight E. Pitman, Superintendent of State Police, Department of Law Enforcement, through his attorney, William J. Scott, Attorney General of the State of Illinois, and Robert W. Genty, Jr., I.D. No. **1761**, through his attorney, Arthur J. O'Donnell, as follows:

1. That any and all charges brought before the Merit Board by the Superintendent against Trooper Genty in cause No. **72-2** will be and the same are withdrawn effective this date;

2. That Trooper Robert W. Genty's suspension from duty, entered December 8, **1972**, is hereby withdrawn; and Trooper Robert W. Genty, Jr. is restored to active duty as a Trooper in the Illinois State Police with seniority unimpaired;

3. That Trooper Robert W. Genty, Jr. is entitled to compensation for wages and benefits as a Trooper of the Illinois State Police during the period of his suspension from duty from December 9, 1972, to and including August 21, 1974, subject to applicable rules of the Division of State Police, Illinois Department of Law Enforcement, and the applicable rules of the Illinois Court of Claims, including but not limited to rules, if any, regarding the set-off of wages actually earned against compensation claimed.

4. That the Division of State Police, Illinois Department of Law Enforcement, shall not oppose any timely and proper petition or claim for compensation for wages and benefits, in accordance with paragraph **No. 3 above, which may be brought by Robert W. Genty, Jr.** in the Illinois Court of Claims or before any other appropriate agency of the State of Illinois;

5. Trooper Robert W. Genty, Jr. shall voluntarily tender his resignation from the Division of State Police, Illinois Department of Law Enforcement, effective **12:01 a.m., August 22, 1974.**

From the evidence introduced at the hearing and as a result of the stipulation filed herein, it appears that the Claimant, Robert W. Genty, Jr. was suspended as an Illinois State Trooper by the State Police Merit Board.

A lawsuit was filed in the Circuit Court of Cook County, and as a result of said lawsuit an agreement was entered into by the Claimant and the State of Illinois whereby Claimant would be restored to full duty as a State Trooper and be allowed to recover his loss of earnings for the time he was suspended upon the condition of his resigning from the State Police Force.

It was stipulated that Claimant's earnings during

the time of his suspension were **\$20,252.40**. At the hearing, it was determined that during the period of his suspension Claimant earned the sum of **\$9,928.25** which should be deducted from the Claimant's earnings during the period of this suspension.

As a State Trooper, Claimant was entitled to certain vacation and holiday allowances as per applicable State Police Departmental Regulations. He seeks to subtract these vacation and holiday allowances which total **\$1,080.00** from the earnings he made in outside employment while suspended.

The question therefore which presents itself is whether or not Claimant is entitled to these vacations and holiday allowances as claimed.

Claimant cites the case of *Wagner vs. State of Illinois*, No. **5208**, **26 Ill.Ct.Cl. 402**, as being on all fours with the present case. In that case, while the suspended Claimant was employed in private industry he received a lower hourly rate than he would have received as a highway patrolman, and instead of working **45** hours per week as a highway patrolman he averaged approximately **60** hours per week.

Claimant also cites the case of *Burke vs. State of Illinois*, **26 Ill.Ct.Cl. 267**. In that case, a claim was filed by the surviving heirs of one Madge Clark who was an employee of the Illinois State Training School for Girls at Geneva, Illinois. At the time of her death, it appeared she was entitled to **16-1/2** work days of vacation time and **10-1/2** work days of accumulated time. A stipulation was entered into by the parties allowing the amount due for accumulated vacation time and accumulated work days at the time of decedent's death.

In the present case, the stipulation says nothing about vacation or other accumulated time.

Matters of this nature have been passed upon several times by this Court. In no instance except by stipulation was any award given for vacation time or accumulated work days.

In the case of *King, Lassin and Leslie vs. State of Illinois*, 26 Ill.Ct.Cl. 396, an award was entered which allowed Claimants' pay due them during their period of suspension. The same was true in the case of *Wagner vs. State of Illinois*, 26 Ill.Ct.Cl. 402, and also in the case of *Sullivan vs. State of Illinois*, 26 Ill.Ct.Cl. 117.

In the case of *Farber vs. State of Illinois*, 25 Ill.Ct.Cl. 89, the Court held that when the Claimant has done everything possible to mitigate damages, he is entitled to back salary. Nothing was said about any employment benefits, etc.

In the case of *Schneider vs. State of Illinois*, 22 Ill.Ct.Cl. 453, the Court goes into great detail as to what a Claimant in a situation such as the present one is entitled. This case held that where a Civil Service employee is illegally prevented from performing his duties and is reinstated by a Court of competent jurisdiction, he is entitled to the salary attached to said office for the period of his removal. There was a full and complete discussion of this matter in that particular case, but nowhere was it held that Claimant was entitled to anything other than the amount due him in back salary.

It therefore appears to this Court that Claimant is entitled to the sum of \$10,324.15. This amount represents his stipulated gross earnings of \$20,252.40 during his period of suspension less his earnings from outside employment in the amount of \$9,928.25.

An award is hereby entered in the amount of Ten Thousand Three Hundred Twenty-Four and 15/100 Dol-

lars (\$10,324.15), less any deductions that should be made for Federal income tax, State income tax, and State Employees' Retirement System.

(No. 75-1265 — Claimant awarded \$196.27.)

IOWA-ILLINOIS GAS AND ELECTRIC COMPANY, Claimant, *us*.
STATE OF ILLINOIS, Respondent.

Opinion filed September 22, 1976.

REPLACEMENT WARRANTS—statute of limitation. Statute of limitations for replacement of warrants issued prior to the effective date of the State Comptrollers Act begins to run when the warrant becomes void and runs two years. Such warrants become void if not cashed within two years of issuance.

PERLIN, C. J.

This cause coming on to be heard on the Stipulation of the Respondent, and this Court being fully advised in the premises find that the Act, as set forth in the Stipulation of the Resondent, which stipulation is set out in full below, is sufficient to grant an award.

“STIPULATION BY RESPONDENT”

Now comes the Respondent by William J. Scott, Illinois Attorney General, and stipulates as follows:

1. That the effective date of the State Comptroller's Act was January 8, **1973**.

1A. The State Comptrollers Act, Warrants Procedure, Chapter 15, Sec. **222** of the Ill.Rev.Stat., **1975**, states:

Warrants outstanding on the effective date of this Act shall be governed by the law in effect on January 7, 1973, except for such provisions of this Act as may be made applicable by the Comptroller with approval of the State Treasurer.

2. The Office of the Comptroller has confirmed that there were no regulations adopted relating to Chapter **15**, paragraph **222**, Ill.Rev.Stat., **1975**.

3. It is admitted that warrant no. **AA1737200** was issued to Iowa-Illinois Gas & Electric Co. in the amount of **\$196.27**, (One Hundred Ninety-Six and 27/100) on December 1, 1971.

4. As of January 7, 1973, said warrant had not yet been presented to the Auditor of Public Accounts for collection. However, it was never presented for collection to the Office of the Comptroller.

5. That the law in effect on January 7, 1973, provided that if the Auditor of Public Accounts should reject the claim for payment of a void warrant, the Claimant could file an action in the Court of Claims (Chapter 49, Sec. 24, Ill.Rev.Stat., 1971).

6. Claimant's complaint for replacement of warrant no. **AA1737200** was filed with the Court of Claims on May 1, 1975, less than four years from the date of issuance of said warrant.

7. That the law in effect on January 7, 1973, provided that any warrant issued by the State of Illinois and not cashed within two years of the date of issuance is void and escheats to the State of Illinois, (Chapter 49, Sec. 22, Ill.Rev.Stat., 1971).

8. That the law in effect on January 7, 1973, provided that the statute of limitations for such action as the instant case begins to run only upon the warrant becoming void (Chap. 29, Sec. 24, Ill.Rev.Stat., 1971) and in the instant case, said limitation period therefore began to run on December 1, 1973.

9. That the Court of Claims Act in effect on January 7, 1973, provided for a two year statute of limitations on all cases except contract actions and actions of vendors of goods and services to the State.

10. That therefore the instant action filed on May **1, 1975**, was filed before the expiration of the applicable statute of limitations which would be four years from the date of issuance.

It is therefore ordered that the Claimant be granted an award in the amount of One Hundred Ninety-Six and 27/100 Dollars (**\$196.27**).

(No. 75-1496—Claimant awarded \$99.75.)

**JAMES ALEXANDER, Claimant, vs. STATE OF ILLINOIS,
Respondent.** . . .

Opinion filed September 14, 1976.

PRISONERS AND INMATES—losses incurred during interinstitutional transfer. Where property of inmates is lost during interinstitutional transfer due to negligence of State, an award will be granted.

PERLIN, C. J.

This is an action to recover the value of a coat which Claimant lost during the course of an interinstitutional transfer on January **11, 1975** from the **Fox Valley Work Release Center** to the Joliet Correctional Center.

Claimant has moved for summary judgment to which Respondent has not objected.

In support of his motion, Claimant has submitted a report of the Department of Corrections Administrative Review Board which admits that Claimant's coat was lost through the negligence of employees of the Department of Corrections and establishes the value of his coat at **\$99.75**.

On consideration thereof, Claimant's motion for summary judgment is hereby granted, and Claimant is awarded the sum of Ninety-Nine and **75/100 Dollars (\$99.75)**.

(No. 76-490—Claimant awarded \$20,844.79.)

UNIVERSAL BUSINESS MACHINES, Claimant, *us.* STATE OF
ILLINOIS, Respondent.

Opinion filed November 9, 1976.

PERLIN, C. J.

This cause coming on to be heard on the Stipulation of Universal Business Machines, Inc., Record Systems, Inc., and the Respondent, and the Court being fully advised in the premises finds that the Respondent has stated good and sufficient grounds for Record Systems, Inc. to be declared a Co-Claimant, said action being required to protect the interest of the State.

It is therefore ordered that the records of the Clerk of the Court of Claims be amended to show Record Systems, Inc. as a party Claimant pursuant to Respondent's Motion for Interpleader.

It is further ordered that, Claimant, Universal Business Machines, Inc. be awarded the sum of Twenty Thousand Eight Hundred Forty-Four and 79/100 Dollars (\$20,844.79), and that Co-Claimant, Record Systems, Inc. be awarded the sum of Two Thousand Nine Hundred Thirty-One and 71/100 Dollars (\$2,931.71), with said total sum of all awards herein being no greater than the original contract obligations of the Respondent.

(No. 76-491—Claimant awarded \$33,000.00.)

PAMELA WESLEY, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL
DISABILITIES, AND DEPARTMENT OF CORRECTIONS, JUVENILE
DIVISION, Respondent.

Opinion filed September 9, 1976.

PRACTICE AND PROCEDURE—stipulation and dismissal of other suits.
Action in tort; other litigation pending in Federal District Court concerning same subject matter. Stipulation as to amount of damages and dismissal of other suits accepted by Court.

PER CURIAM.

This cause coming on to be heard on the Stipulation of the parties hereto which reads as follows:

1. The instant cause filed on October **2, 1975**, is based upon the alleged tortious acts of agents and employees of the Illinois Department of Children and Family Services, the Illinois Department of Mental Health and Developmental Disabilities, and the Illinois Department of Corrections-Juvenile Division.

2. Prior to the filing of the instant cause, Pamela Wesley filed suit in the United States District Court for the Northern District of Illinois, No. **71 C 794** titled *Wesley us. Weaver et al.* against various past and present employees of Respondents, which complaint was incorporated into the instant claim.

3. The Claimant agrees to strike from the instant claim all reference to and questions arising from the allegations going to the alleged denial of constitutional rights as contained in the instant claim.

4. The Claimant expressly agrees to perform all acts necessary to effect dismissal of the above federal case and further agrees that the entry of an award by this Court and the satisfaction of said award shall waive, release, relinquish and forever bar all claims or causes of action that Claimant has or may have against any officers, agents and employees of the Respondent Departments, from the beginning of time to the date of these presents.

5. The Respondent Departments by their directors, after complete investigation of the facts and elements

that are the basis of this claim and upon the advice and counsel of their respective departmental attorneys, hereby instruct and advise the Attorney General's Office and the Justices of the Court of Claims that the interests of the State of Illinois will best be served by the entry of an award to the Claimant in the amount of Thirty-Three Thousand Dollars (\$33,000.00).

The foregoing stipulation was signed by the Claimant, Pamela Wesley; by her attorney, Roger B. Derstine; and by the following officers of the Respondent: For the Department of Children and Family Services, Mary Lee Leahy, Director, and Marian Barnes, Chief Technical Advisor; For the Department of Mental Health & Developmental Disabilities, LeRoy P. Leavitt, M.D., Director, and **Alan E. Grischke, Chief Counsel**; For the Department of Corrections-Juvenile Division, Charles J. Rowe, Acting Director, and Jeffrey C. Doane, Chief Counsel; and by William J. Scott, Attorney General, as counsel for the Respondent; and the Court being fully advised in the premises;

It is hereby ordered that the sum of Thirty-Three Thousand Dollars (\$33,000.00) be awarded to Claimant in full satisfaction of any and all claims or courses of action that Claimant has or may have against any officers, agents and employees of the Respondent departments from the beginning of time to the date of these presents.

(No. 76-766—Claim denied.)

**ANN ELIZABETH SCOFIELD, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed June 6, 1977.

MATTHEW P. CICERO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

NEGLIGENCE— *contributory negligence*. Claimant was found to be contributorily negligent in hitting a chuckhole while riding her bicycle where evidence indicated it was a clear day, she had passed by the hole recently, she could have seen far ahead had she been looking, and she was tending to a dog in a carrier on the front of the bicycle.

SPIVACK, J.

Claimant seeks to recover damages for personal injuries sustained as a result of a fall from a bicycle at Lake Le Aqua Na State Park, Lena, Illinois.

A full hearing was conducted before Commissioner John P. Simpson, who heard the testimony of Claimant, received the evidence depositions of two witnesses, and admitted into evidence 11 exhibits. The Commissioner has duly filed his report, together with the transcripts and exhibits which are, together with the briefs and arguments of the parties, now before the Court.

A brief summary of the facts determined at the proceedings before the Commissioner is as follows:

On June 13, 1975, Claimant and members of her family were camping at Lake Le Aqua Na State Park. At about 10:30 a.m., Claimant and her two young daughters rode their bicycles from the camp site to a concession stand. The road in part went down one hill and immediately up another. The day was clear and visibility was good. Claimant was riding a three-speed bicycle, with handbrakes, in good mechanical condition. Claimant and her children completed the trip to the concession stand without incident but on the way back to the camp site, at the foot of the hill leading from the concession stand, Claimant drove into a chuckhole in the road, was thrown from her bike, and injured. She lost 272 hours of work from the accident and sustained

sizeable medical expenses, but apparently has recovered in full from her injuries.

Claimant testified as follows:

We were headed back to the campgrounds, as I said, and the girls were in front. . . . We had started down a fairly steep hill, and when I got to the bottom there was a big chuckhole, and I didn't see it very far ahead before it was right there. And I slammed on the brake and skidded, and the next thing I knew I was conscious with my head on the pavement, and I could hear Dianne my youngest daughter crying by my feet. . . .

The chuckhole was a jagged three foot hole, irregular in shape and one inch deep. It was patched by 4:30 p.m. of the same day.

Claimant testified additionally that you could see a long distance, that it was a clear day, but she didn't see the hole until she was two or three feet from it. She admitted that in a prior deposition she had testified that she was roughly a foot or so from the hole when she saw it, and that she could have seen far ahead had she been looking.

She further testified that she was not going fast, because the hill was steep and she didn't want to go too fast.

At the time of the accident, the family's small dog was riding in the small basket attached to the front of Claimant's bicycle.

Donald R. Strohecker, a park worker, in his evidence deposition, testified that following the accident Claimant stated in his presence that when she hit the chuckhole, the dog started to bounce out of the basket, and when she tried to catch the dog, she lost control of her bicycle and fell off.

Mrs. Susan Eisenhower, an independent witness, in her evidence deposition, testified that following the accident, Claimant stated that they (the family) had gone

for ice cream and that they were going back; that she had the dog in the basket and that he was fussing going down that steep hill; that she was more or less paying attention to it (the dog) and that is all she remembered.

In order for the Claimant to sustain the burden of proof entitling her to recovery, she must show by a preponderance of the evidence that (i) she was free from contributory negligence, (ii) that the State was negligent, (iii) that the negligence was the proximate cause of the occurrence from which her injuries naturally and proximately flowed.

In directing our attention to Claimant's first burden of proof, i.e., her duty to show due care for her own safety, we are mindful of at least three cases which have been before us on almost identical facts and where we have held that failure to observe a chuckhole which was clearly visible for a reasonable distance was contributory negligence.

In *McAbee v. State of Illinois*, 24 Ill.Ct.Cl. 374, this Court held that the Claimant therein who was riding a bicycle on a clear day when the pavement was dry and with no obstructions to bar visibility was contributorily negligent in not seeing a hole in the street.

In *Schnell v. State of Illinois*, 24 Ill.Ct.Cl. 257, Claimant, riding a motorcycle, failed to notice a hole near the center line of the highway. She had been riding in a group with four other motorcyclists.

The Court held:

Two other riders in the same party had passed the hole without difficulty and one who had apparently been riding in about the same position as Mrs. Schnell had noticed the hole and avoided it. We can only conclude that had Claimant been reasonably alert and observant **she** could have avoided this unfortunate incident. *Schnell v. State of Illinois*, 24 Ill.Ct.Cl. 257, 260.

In *Alm vs. State of Illinois*, No. 5268, the Claimant was a minor, riding his bicycle along a three foot me-

dian strip in a highway, when he struck an unmarked hole approximately three inches deep and two feet long which caused him to be thrown immediately in front of an oncoming car.

This Court held:

The accident in question occurred during the daylight hours, and the hole in the median strip should have been readily visible to the Claimant riding his bicycle. Had the Claimant been reasonably alert and observant he should have seen the hole and been able to avoid the accident. *Alm vs. State of Illinois*, No. 5268.

It is to be noted that Mrs. Scofield's two daughters, riding their bicycles immediately ahead of their mother, each avoided the hole. It is also to be noted that Mrs. Scofield had passed the same spot shortly before the accident on her way to the concession stand. While it is true that on the trip to the concession stand she was riding on the opposite side of the road, nevertheless the hole was relatively in the middle of the road and was visible from both directions.

It is the finding of the Court from the evidence in the record that Claimant has not sustained her burden of proof that she was in the exercise of due care for her own safety. On the contrary, the manifest weight of the evidence is that she was contributorily negligent.

In view of our foregoing opinion, it is not necessary to consider whether the State was negligent in allowing the chuckhole to be present, whether the State had knowledge, express or implied, of the existence of the hole, and like questions.

The claim of Ann Elizabeth Scofield is denied.

(No. 76-1136—Claimant awarded \$610.00.)

**CHARLES B. MCCREE, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed October 7, 1976.

CHARLES B. McCREE, Pro se.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

SAFETY RESPONSIBILITY ACT—return of security deposit. Claim against the Secretary of State for security deposit made by Claimant under Safety Responsibility Act which was transferred to General Revenue Fund.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the refund of a security deposit held by the Illinois Secretary of State, Safety Responsibility Unit pursuant to Illinois Vehicle Code, Ill.Rev.Stats., Ch. 95-1/2, § 7-503. An investigation of this claim by the Secretary of State determined that the amount due would have been paid in the regular course of business had the claim been presented to the proper office before the money was transferred to the General Revenue Fund in the State Treasury in accordance with Section 7-503 of the Illinois Vehicle Code, the same having been confirmed by the Secretary of State, a copy of said report being attached to the Joint Stipulation of the parties.

It is hereby ordered that the sum of Six Hundred Ten Dollars (**\$610.00**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 76-1200—Claimant awarded \$1595.17.)

ROCK ISLAND FRANCISCAN HOSPITAL, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 3, 1977.

SERVICES RENDERED—Joint stipulation. Where Claimant and Respondent stipulate to facts and damages, an award will be entered accordingly.

POLOS, C. J.

This cause coming on to be heard on the Joint Stipulation of the parties, and the Court being fully advised in the premises find: that the parties have stipulated that the claims for Manuel Cavazos, Esther Fogel, Ollie Glidewell, John Ingle and Mary Ellen Si-meons have been paid. This Court, accordingly, denies those portions of this claim.

This Court further finds that in accordance with the stipulation the Claimant has withdrawn its claim for services rendered to Marjorie Thomas, and this Court accordingly denies that portion of this claim.

Pursuant to the Joint Stipulation of the parties this Court finds that the Department of Public Aid does not contest the claim for services rendered on behalf of Jerry Buker, Jimmy Davis, Pamela Martin or Ruth Mattingley and therefore grants an award for services rendered on behalf of the recipients as follows:

NAME	PUBLIC AID NUMBER	DATES OF SERVICES RENDERED	AMOUNT
Jerry Buker	6-89-6719	8/28/72 8/30/72	\$147.56
Jimmy Davis	3-89-2191	7/16/73 7/17/73	73.78
Pamela Martin	4-89-9097	9/5/74- 9/10/74	562.25
Ruth Mattingley	4-89-7911 4-89-7901	7/14/73 7/25/73	811.58

It is therefore ordered the Claimant be advanced an award in the total amount of One Thousand Five Hundred Ninety-Five And 17/100 Dollars (**\$1595.17**) as set forth above.

(No. 76-1310—Claimant awarded \$210.00.)

JOE J. GALLARDO, **Claimant, us. STATE OF ILLINOIS,**
Respondent.

Opinion Filed October 15, 1976.

JOE J. GALLARDO, Pro se.

WILLIAM J. SCOTT, Attorney General; PEGGY BASTAS, Assistant Attorney General, for Respondent.

SAFETY RESPONSIBILITY ACT—return of security deposit. Claim against Secretary of State for security deposit made by Claimant under Safety Responsibility Act which was transferred to the General Revenue Fund.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the refund of a security deposit held by the Illinois Secretary of State, pursuant to Section 7-204 of the Illinois Vehicle Code, Ill.Rev.Stats., Ch. 95-1/2, §7-204. An investigation of this claim by the Secretary of State determined that the amount due would have been paid in the regular course of business had the claim been presented to the proper office before the money was transferred to the General Revenue Fund in the State Treasury in accordance with Section 7-204 of the Illinois Vehicle Code, the same having been confirmed by the Secretary of State, a copy of said report being attached to the Joint Stipulation of the parties.

It is hereby ordered that the sum of Two Hundred Ten Dollars (**\$210.00**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned clause.

(No. 76-1409 — Claim denied.)

JOSEPH SITKA, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed April 22, 1977.

LIMITATIONS—vendors to state. Landlords come within purview of Section 22 of Court of Claims Act which limits cause of action by vendors to one year.

SPIVACK, J.

This cause is now before the Court on Respondent's Motion to Dismiss. The Court has examined said motion and Claimant's answer thereto and the points and authorities cited in the pleadings.

This is an action commenced on March 3, 1976, to recover the sum of \$59,555.00 for rent withheld from Claimant by the Illinois Department of Public Aid. The periods of occupancy of the divers tenants commenced on December 15, 1965, and concluded on August 2, 1971. Claimant contends that rental was erroneously withheld because of certain ordinance violations in and about the rental properties which have been in fact corrected or contracted to be corrected. Respondent contends that the violations were not cured and further that the withholding was an administrative penalty permitted under Ill.Rev.Stat., Ch. 23, § 11-23.

In view of the Court's reaffirmation that the cause is barred by the Court of Claims Act, 022, Ill.Rev.Stat., Ch. 37, 0439.22, it is not necessary to determine the factual issues in contention.

Claimant argues that §22 of the Court of Claims Act, which reads as follows:

Claims cognizable against the State by vendors of goods or services under the Illinois Public Aid Code . . . shall have a period of limitation of one year after the accrual of the cause of action. . . .

is inapplicable in that Claimant has not rendered "goods or services," but has in fact contracted with the tenants

(Public Aid recipients), thus triggering the five-year limitation statute applicable to contracts.

The case of *Landsman, et al. v. State*, 27 Ill.Ct.Cl. 403, is on all fours with the case at bar and is determinative of the arguments and issues herein presented. Precisely the same factual issues were presented in that case as in this. In rejecting Claimant's argument that the claim was contractual in nature, the Court in *Landsman*, at 405, stated:

... a landlord is a vendor of services if the landlord purports to furnish a tenant with such necessities as light, water, heat or janitor services. A landlord is also a vendor of an interest in real estate when renting or leasing housing to a tenant, as the term vendor is used in the Public Aid Code.

A landlord, being a vendor within the purview of 922, must file his action within one year from the date upon which it accrues or be forever barred.

The Claimant in this cause, having filed his action some 4-1/2 years after it accrued, is barred by the limitations contained in 622.

Accordingly, Respondent's motion is granted, and the cause dismissed with prejudice.

(No. 76-1952—Claimant awarded \$73.75.)

**IBM CORPORATION, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed May 31, 1977.

HOLDERMAN, J.

Claimant filed a claim in the amount of **\$73.75** for services rendered to Governors State University.

Respondent filed a Motion to Dismiss setting forth as grounds for said motion the following:

I. That Claimant's complaint sounds in contract and alleges the sum of **\$73.75** due as per a contract between Claimant and the Union for Experimental Colleges and Universities of Yellow Springs, Ohio.

11. That the Union for Experimental Colleges and Universities is not, nor was it ever, an agency of the State of Illinois.

In going over the file in this case, I **do** not find anything to support the contention of Respondent. The invoice-vouchers indicate the services were rendered to the Governors State University in Park Forest, Illinois. Nowhere on the invoice-vouchers or the material in the file is any reference made to services being provided to the college referred to in the Motion to Dismiss.

Motion to Dismiss is therefore denied, and an award is entered in favor of claimant in the amount of Seventy-Three And 75/100 Dollars (**\$73.75**).

(No. 76-2238—Claimant awarded \$14,600.)

LINDA L. LEONARD, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed February 3, 1977.

FAIR EMPLOYMENT PRACTICES COMMISSION—*settlements*. The Fair Employment Practices Commission is empowered by statute to approve settlements entered into between parties to a dispute, said settlements having been entered into as a result of conciliation meetings between parties to the dispute.

POLOS, C. J.

This cause coming on to be heard on the stipulation of the Respondent, and the Court being fully advised in the premises finds:

1. That the Fair Employment Practices Commission is empowered by statute, Ill.Rev.Stat., Ch. **48, 4858**,

to approve settlements entered into between the parties to a dispute, said settlements having been entered into as the result of conciliation meetings between the parties to the dispute.

2. The stipulation attached to the complaint, filed in the instant cause, as Exhibit "B" is a settlement entered into between the parties to the dispute as the result of conciliation meetings between the parties to the dispute.

It is therefore ordered that the Claimant (Complainant) be awarded, pursuant to the terms of the stipulation entered into between the Department of Children and Family Services and the Claimant herein, and approved by the Fair Employment Practices Commission pursuant to Ill.Rev.Stat., Ch. 48, **8858**, the sum of Fourteen Thousand Six Hundred Dollars (\$14,600.00).

(No. 76-2354—Claimant awarded \$12.50.)

ELSIE E. SMITH, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 3, 1977.

ELSIE E. SMITH, Pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

PER CURIAM.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for damages sustained by Claimant, Elsie E. Smith, to her eyeglass frames when she was struck by a resident of the Illinois

Youth Center, Geneva. That the Department of Corrections in their departmental report of November 10, 1976, verified the foregoing facts as alleged by the exhibit attached to the complaint.

It is hereby ordered that the sum of Twelve Dollars and Fifty Cents (**\$12.50**) be awarded to Claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 76-2736—Claimant awarded \$552.00.)

JEANNETTE LEWIS, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed May 6, 1977.

GOLDBERG & MURPHY, LTD., by **JEROME F. GOLDBERG,** Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; PAUL M. SINGPIEHL, Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY AWARDS—Department of Personnel Regulations. Where Department of Personnel issued a regulation to conform with a decision of the Civil Service Commission which retroactively changed Claimant's position classification but did not extend back in time far enough to comply with the decision (because of knowledge of the Department that the funds had lapsed), the Court interpreted the regulation to extend far enough back based on intent of Department to give efficacy to the Civil Service Commission's decision.

SPIVACK, J.

This matter is before the Court on Claimant's Complaint, Respondent's Motion to Dismiss, Claimant's Response to Respondent's Motion to Dismiss and Respondent's Motion to Strike Claimant's Response.

Since there appears to be no significant dispute as to the facts giving rise to the claim, but only as to the effect of the law applicable to said facts, we are of the

opinion that our ruling on the pending motions is dispositive of the entire matter.

The facts upon which the parties agree are briefly as follows:

Claimant was an employee of the Illinois Department of Mental Health and Developmental Disabilities during the period October 15, 1974, to June 16, 1976. During this period, although her job classification was "Administrative Clerk," she claimed that she was in fact performing services entitling her to the classification "Executive I," a higher paid classification. The director of the Department of Personnel decided this claim adversely to Claimant, and she appealed to the Illinois Civil Service Commission which, on June 16, 1976, reversed the prior adverse ruling and granted her the relief sought in that proceeding. As a result of and in accordance with those proceedings, the Department of Mental Health paid Claimant the sum of One Thousand Seventeen Dollars (\$1,017.00), representing the salary difference between the classifications "Administrative Clerk" and "Executive I" for the period fiscal 1975—1976. The Department did not pay Claimant the sum of Five Hundred Fifty-Two Dollars (\$552.00) which amount represents the salary difference for the period she was employed during fiscal 1974—1975. This non-payment occurred because the funds appropriated for such purpose had lapsed. Claimant here seeks reimbursement for said sum.

The State argues that Claimant's claim must be denied on two grounds: first, that the Department of Personnel issued a regulation in conformance with the decision of the Civil Service Commission retroactively changing Claimant's position classification as of July 1, 1975 (and not as of October 15, 1974); second, that

Claimant's proper remedy was a review of the Department of Personnel's regulation in the Circuit Court; and, having failed to do that, she is statutorily precluded from maintaining her action here since she did not exhaust all of her remedies.

We do not believe that the intent of the regulation of the Department of Personnel was to limit Claimant's job classification to the period commencing July 1, 1975. On the contrary, we believe that the said regulation was intended simply to give efficacy to the decision of the Civil Service Commission which retroactively changed the classification for the period when Claimant actually performed the services giving rise to the higher classification. Undoubtedly the regulation in question was limited as it was because the Department was aware of the fact that the funds had lapsed. To hold otherwise would be an unequitable distortion of the findings of the Civil Service Commission.

In view of our interpretation of the regulation of the Department of Personnel, it is not necessary to consider the question of Claimant's exhaustion of other remedies.

Claimant, Jeannette Lewis, is therefore awarded the sum of Five Hundred Fifty-Two Dollars (\$552.00) less proper deductions on account of taxes, pension and the like.

(No. 76-3149—Claimant awarded \$3,451.85.)

L & L INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion Filed May 11, 1977.

CONTRACTS—liability. State is liable to Claimant on contract for emergency repair services performed on building pursuant to a contract between the two parties, despite the fact State was a sublessor of premises, and regardless of ultimate liability of owner.

POLOS, C. J.

The claim of L & L, Inc. in this case is for repair services to air conditioners at the Criminal Investigation Bureau headquarters of the Illinois Department of Law Enforcement. The building although occupied by the State of Illinois was owned by Carl E. Fielland and A. Walter Hirshberg. Mr. Fielland and Mr. Hirshberg leased the premises to Addressograph-Multigraph Corporation who in turn subleased the premises to the State of Illinois. Prior to the execution of the sublease, the rights of Carl E. Fielland and A. Walter Hirshberg were assigned to C. A. Fielland, Inc., General Contractors, of Tampa, Florida. They in turn consented to the sublease to the State of Illinois. Consequently the air conditioning failed during the occupancy by the State of Illinois, and they entered into a contract with L & L, Inc. to make the immediate emergency repairs to the air conditioning system in order to maintain an appropriate level of operating comfort.

The departmental report establishes that the Department of Law Enforcement had adequate funds appropriated for this expense, but they refused to pay the bill because they felt that the owner of the building was responsible for maintenance of the air conditioners. The issue as to the ultimate liability of the owner of the building is not before this Court.

The provisions contained in the original lease and the subsequent lease are not before this Court. The issue before this Court is the contract entered into by the State of Illinois with L & L, Inc. The Department of Law Enforcement does not deny this contract and admits to having entered into it with L & L, Inc.

It is therefore ordered that Claimant be awarded Three Thousand Four Hundred Fifty-One and 85/100 Dollars (\$3,451.85).

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINIONS

- 4714 Edward Sullins
- 4758 Randall Kent, **a/k/a** Randall Kingston
- 5146 Mary Ann Wentz
- 5348 Maurice **Roe**
- 5308 Eddie B. Owens, Admr., Etc.
- 5359 Thomas E. Montague
- 5364 Robert Cage
- 5395 Robert Stanley, for himself, Etc.
- 5414 Donald Schmitt
- 5424 Fred Neiman
- 5466 Therese Magnant, Et Al.
- 5482 Herman Schierenbeck
- 5489 James C. Foster, III, A Minor, Etc.
- 5507 James D. Edelen, Et Al.
- 5553 Robert J. Smith
- 5597 Roy Lakes, Conservator, Etc.
- 5817 Thomas Piasecki, Administrator of the Estate of Janet Piasecki,
Deceased
- 5901 First National Bank of Belleville, Et Al.
- 6085 Stacey Moving, **Ltd.**, and Royal-Globe Insurance, Co., as Subrogee
of Stacey Moving, LM.
- 6134 Brian Geier, William E. Stockdale and John Christopher Stockdale
- 6277 Anita P. McCarthy
- 6415 Earl Scholes and Keith Montgomery
- 6426 Parke DeWatt Laboratories, Inc.
- 6685 Patricia Ohman
- 6724 Atlantic Richfield Company
- 6897 Guillermo De La Pena
- 6926 Patsy J. Eggert, Et Al.
- 6941 Dean Stassi, by his Next Friend and Guardian Vito Stassi
- 73-416 John M. Leonard
- 74-21 Berz Ambulance Service, Inc.
- 74-71 James Hayes
- 74-107 Frank E. Studebaker
- 74-221 Alfred Eugene Center
- 74-245 The New Lumber Company
- 74-310 Candido Rosales, Et Al.
- 74-317 Lenore Taylor
- 74-319 Vincent F. Provenzano

- 74-347 Berz Ambulance Service, Inc.
- 74-415 Paradyne Corporation
- 74-423 Trans-American Storage, Inc.
- 74-515 Charles Van Ellis, Adm., Et Al.
- 74-786 Mobil Oil Corporation, Etc.
- 75-71 Virginia McNally, and Harris Trust and Savings Bank, Adm., Etc.
- 75-183 Barbara Farr
- 75-208 Margaret D. Sumner
- 75-218 Exxon Company, U.S.A., A Foreign Corporation
- 75-232 Michael Cesario, Mary Cesario & Anthony Myles, Etc.
- 75-236 Ford Ransom
- 75-237 Frank Novak
- 75-287 Ronald R. Mullins
- 75-405 Ellen Satterwhite
- 75-456 Bismarck Hotel
- 75-502 Vernia B. White
- 75-516 Liberty Buick Co., Inc., Etc.
- 75-536 Edwin C. Porter
- 75-550 Irving Weissman, M.D.
- 75-734 Kerry McMahon
- 75-771 Charles W. Harre Construction
- 75-773 Monroe Cartage, Inc.
- 75-782 Wilfred Wenmoth & Bessie Wenmoth
- 75-785 Robert Stafford Byars
- 75-830 Christopher Fogarty
- 75-962 Dividend Bonded Gas
- 75-979 David C. Hawkinson
- 75-997 Ridgeway Hospital, a Not-For-Profit Corporation
- 75-998 Ridgeway Hospital, a Not-For-Profit Corporation
- 75-999 Ridgeway Hospital, a Not-For-Profit Corporation
- 75-1000 Ridgeway Hospital, a Not-For-Profit Corporation
- 75-1001 Ridgeway Hospital, a Not-For-Profit Corporation
- 75-1027 Aetna Casualty & Surety Division, Subrogee of Edward Linnemann, Jr.
- 75-1077 Pinkerton's Inc.
- 75-1082 Louis Trueluck
- 75-1136 University of Minnesota Hospitals
- 75-1137 Walter L. Scoggins
- 75-1200 Irene Tomczak
- 75-1292 Southwestern Petroleum Corp.
- 75-1350 H. Keith Lesnich
- 75-1379 Association of Teacher Educators

- 75-1472 Monroe Division Litton Business Systems, Inc.
- 76-12 Florence Crittenton Peoria Home
- 76-16 Charles T. Caldwell
- 76-17 David W. Peterman
- 76-18 George T. Jones
- 76-19 Henry J. Jallas
- 76-20 John Tonjes
- 76-21 Arthur Blackwell
- 76-22 Henry Dinora
- 76-23 Earl Baum
- 76-24 Jack Roy Burke
- 76-25 Nathan L. Chandler
- 76-26 Marvin Franklin
- 76-27 Charles R. Turasky
- 76-28 Howard L. Maurer
- 76-29 Oscar C. Carls
- 76-30 August A. Winkler
- 76-31 Robert Billek
- 76-32 James J. Gephart
- 76-33 Delbert L. Schoonover
- 76-34 Daniel J. Hawks, Jr.
- 76-35 Willard Lee Reside
- 76-36 Robert Springer
- 76-53 Air Illinois
- 76-65 Helen Baia
- 76-147 Tollat Zegar
- 76-189 IBM Corporation
- 76-196 Salvatore Loschiavo
- 76-199 Minnesota Mining and Mfg. Co.
- 76-232 Chadwick Lumber Company
- 76-302 Gregoria Arellano
- 76-326 Clyde Voelkel
- 76-357 Darrow S. Bishop
- 76-358 Barbara O'Connor
- 76-359 Virginia Parker
- 76-360 Edwin Silverman
- 76-361 Mary Ellen Gornick
- 76-362 Sarai M. Jackson
- 76-365 Marilyn E. Nelson
- 76-421 Lynette Kay Arbeiter
- 76-426 The South Side Bank
- 76-434 Robert George Hansen

- 76-437** Martin J. Phee, M.D.
76-441 David Vega
76-490 Universal Business Machines, Inc.
76-500 Addressograph-Multigraph Corporation
76-503 Addressograph-Multigraph Corporation
76-504 Addressograph-Multigraph Corporation
76-508 Erlinden Manufacturing Company
76-510 Fernando & Marie E. Martinez
76-520 Dorothy Rule
76-622 James G. Donahue and John A. Thornhill Jr.
76-666 Board of Education of School District No. **142** Cook County, Illinois
76-695 George Dudenbostel
76-702 Addressograph-Multigraph
76-720 William E. Wyne
76-784 Pheasant Run
76-803 Cintas Corporation
76-811 Science Research Associates
76-845 Klingberg Schools
76-861 Cole-Palmer Instrument Co.
76-862 Loyola Medical Practice Plan, Loyola University Medical Center
76-886 R. H. Armbruster Mfg. Co.
76-950 Esther Saperstein
76-957 Joseph F. Sefranka
76-958 AM Varityper Division
76-961 Barbara Shapiro
76-965 Kenneth Cissell
76-982 West Publishing Co.
76-985 Angela Ramas
76-1013 Systematics Corp.
76-1020 Midwest Family Resource Associates, Ltd.
76-1052 William Anderson
76-1059 Robert A. Goodall
76-1068 Lutheran Welfare Services of Illinois
76-1071 Cheryl M. Miller
76-1072 Barbara Whitfield
76-1083 Charles F. Sinclair
76-1084 Edward A. Swicki
76-1085 Robert W. Hughes
76-1093 Albert Rients
76-1100 Kroll Glass Service, Inc.
76-1116 Tabernacle Community Hosp. and Health Center
76-1151 Federal Signal Corporation

- 76-1192 Burlington Northern, Inc.
- 76-1223 Hub Clothiers
- 76-1225 Lincoln Tower
- 76-1228 Robert Dyer
- 76-1232 Consolidated Chemex Corp.
- 76-1236 Nile Marriott, Inc.
- 76-1301 Sears, Roebuck & Co.
- 76-1308 John Anna Melton
- 76-1312 McDonnell Douglas Automation Company
- 76-1324 NCR Corporation
- 76-1368 Alexander Hilkevitch, M.D.
- 76-1371 St. Mary's Hospital
- 76-1406 Gunthorp-Warren Printing Co.
- 76-1409 Joseph Sitka
- 76-1419 Fred M. Levin, M.D.
- 76-1421 Union Medical Center
- 76-1430 Board of Education School District U-46
- 76-1440 Robert L. Peasley, D.D.S.
- 76-1456 Gary Charles Welsh
- 76-1470 North Central Dialysis Center, S.C.
- 76-1475 Albert Winfrey
- 76-1476 Alan Robinson
- 76-1478 Union Medical Center
- 76-1479 Jose P. Parcon, M.D.
- 76-1482 Gary L. Jones
- 76-1502 W. J. Gonwa, M.D.
- 76-1505 Elwood F. Kortemeier, M.D.
- 76-1520 Russell Lucas
- 76-1532 Sanders Associates, Inc.
- 76-1536 Mae L. Ketterman
- 76-1545 Irwin Widen
- 76-1547 Naperville Rental Center
- 76-1548 Julia R. Waller
- 76-1549 Merckels, Inc.
- 76-1555 Lloyd Oscar Larson
- 76-1561 Commonwealth Edison Co.
- 76-1562 Larry and Wanda Turner
- 76-1570 Kevin L. Field
- 76-1571 Vera R. Lookabaugh
- 76-1575 Janet Verfurth
- 76-1576 Lawrence E. Gerber
- 76-1584 Marina Alvarez

- 76-1586 Laser, Schostok, Kolman & Frank
- 76-1587 Elizabeth A. Behrens
- 76-1597 Barnes Hospital
- 76-1607 **Rose** L. Negrelli
- 76-1608 Tiny Tot Pre-School
- 76-1610 Edith Laschia
- 76-1620 Federal Signal Corp.
- 76-1626 Leila G. Hicks
- 76-1627 Harry Jaffe
- 76-1629 Mary E. Gramme
- 76-1639 Deborah A. Bortoli
- 76-1642 Esther P. Mocega-Golzaes
- 76-1645 Harold F. & Marjorie B. Maris
- 76-1654 Edward W. Lazzar, D.P.M.
- 76-1655 Rose L. Jones
- 76-1660 Robert E. Burket
- 76-1661 Continental Illinois National Bank & Trust Co. of Chicago
- 76-1665 Kathleen A. Rosko
- 76-1670 Elim Christian School
- 76-1671 Grant V. Finan
- 76-1673 Laddie J. and Kathryn **A.** Forejt
- 76-1687 Hyatt Corporation
- 76-1693 Huston-Patterson Corporation
- 76-1723 Master Plan Service Co.
- 76-1724 Methodist Medical Center of Illinois
- 76-1770 Rockford Memorial Hospital
- 76-1784 Jeanne Ballard
- 76-1786 Barnes Hospital
- 76-1814 Dorothy Rule
- 76-1828 James F. Cantwell
- 76-1829 Charles Patterson
- 76-1830 Raymond L. Micou
- 76-1831 Dorothy M. Carpenter
- 76-1832 Jimmy Singletary
- 76-1833 Hildegard Bielefeld, Dolores Martinez, Louise Dennison, Marion
Tait, Norma Chamberlain, Bessie Harris
- 76-1846 DanielCorriglio, Jr.
- 76-1862 Gladys V. Baker
- 76-1878 Richard **W.** Vincent ~~Estate~~ d/b/a Vincent Memorial Home
- 76-1879 Herbert Dailey
- 76-1885 T. **W.** Cook, M.D.
- 76-1886 Rutgers University

- 76-1887** Larry Flora
- 76-1898** Village Treasurer of Reddick
- 76-1902** Jackson County Sheriffs Office
- 76-1906** Service Optical
- 76-1907** James W. Betts
- 76-1916** Raymond L. Jacobs, M.D.
- 76-1918** William E. Wheeler
- 76-1926** South Suburban Hospital
- 76-1939** Downers Grove Sanitary Dist.
- 76-1949** Maine Township High School Dist. **207**
- 76-1976** Air Illinois
- 76-1979** Air Illinois
- 76-1981** Air Illinois
- 76-1991** Michael Reese Hospital and Medical Center
- 76-2014** Anthony Ross
- 76-2038** IBM Corporation
- 76-2040** IBM Corporation
- 76-2046** State Employees Retirement System of Illinois
- 76-2048** Gloria Cholewinski
- 76-2049** John S. Lynott
- 76-2058** William R. Corzilius
- 76-2063** Sharon K. Robbs
- 76-2064** Paul Vega
- 76-2075** Cook County Hospital
- 76-2106** Michael Diamond, Ph.D.
- 76-2107** Christ Hospital
- 76-2109** A. M. Swanson, **M.D.**
- 76-2145** Daniel Tieman
- 76-2146** Meridith G. Mullen
- 76-2156** Clifford J. Provo
- 76-2162** Roger Clark Anderson
- 76-2189** Will Russell
- 76-2220** Henry Zellmer, d/b/a Zellmer Truck Lines
- 76-2237** Raymond G. Hill
- 76-2247** Elwood H. Michel and Mary Kathryn Korow, Successors to Hockey Unlimited, Inc.
- 76-2248** Xerox Corporation
- 76-2271** Illinois Bell Telephone Co.
- 76-2306** John A. Barickello
- 76-2325** Union Planters National Bank Lamar Branch **12**
- 76-2326** Union Planters National Bank Lamar Branch
- 76-2346** Don P. Koeneman

- 76-2361 Academic Press, Inc.
76-2362 John Tarkowski
76-2390 Helen C. Riedner
76-2398 Otis S. Wilson
76-2401 Sjostrom & Sons, Inc.
76-2436 Robert L. Davis
76-2511 Springer Verlag, New York, inc.
76-2568 Jewel Food Stores Div. of Jewel Companies, Inc.
76-2618 Wolfe, Rosenberg & Assoc. Inc.
76-2666 Romney International Hotels, Inc.
76-2684 Francis Riordan
76-2727 Houghton Mifflin Company
76-2774 Ar & V Enterprises
76-2926 Robert S. Soljacich
76-2961 I. B. M. Corporation
76-2997 Eric Shaw
76-3136 Rudolph J. Moravec
76-3139 Hazel Wilson Home
76-3221 Andrew G. Tarby, Jr.
76-3225 Charles D. Thomas
77-5 Silver Cross Hospital
77-53 Roger D. McKim
77-119 Ronald Shlensky, M.D.
77-147 Memorial Medical Center
77-151 McDonnell Douglas Automation Co.
77-160 Richard F. Kohnen
77-162 Eric MacNeary
77-247 Samuel L. Wilson
77-373 Terry Lee McLain
77-394 Willie McClure
77-544 John R. Bell
77-602 Timothy John Moretz
77-603 Freddie B. Williams, Jr.
77-646 Wayne Chism
77-659 Charles Reude
77-693 Kenneth E. Chitwood
77-697 Richard Lee Mitchell
77-698 Donald Allen Anderson, Jr.
77-723 Ira J. Coleman, Jr.
77-733 Roger L. Rainey
77-738 Roscoe Gilliam
77-780 Ronald Goodwin

CONTRACTS—LAPSED APPROPRIATION

When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due Claimant.

73-176	Kenneth Weiss, M.D.	\$45.00
73-280	Visi Flash Rentals, Inc.	165.50
73-308	William M. Cohen	290.00
74-152	John J. Nimrod	847.48
74-658	Bismarck Hotel	454.02
75-116	Bismarck Hotel	66.81
75-146	Margaret L. Hess	947.49
75-201	Edgewater Hospital	1,898.25
75-219	Exxon Company, U.S.A.	1,483.93
75-253	Max Wood	1,185.61
75-309	Burdox, Inc.	72.00
75-341	United TBA	21.95
75-490	Bismarck Hotel	215.94
75-541	Will County Sheriffs Department	546.29
75-561	Bismarck Hotel	36.66
75-618	Child Development Institute	4,592.00
75-750	Central Y.M.C.A.	640.50
75-772	Mercy Hospital	6,866.19
75-784	Food Town	1,372.25
75-786	Food Town	83.56
75-787	Food Town	142.89
75-788	Food Town	73.84
75-931	Licata Moving & Storage Company	240.00
75-983	Holiday Inn of Princeton	27.30
75-988	Ambassador Motor Inn of Decatur, Inc.	293.85
75-1010	Tri-City Electric Company, Inc.	116.44
75-1033	Maurice W. Coburn	600.00
75-1062	Sears, Roebuck & Co.	1,460.04
75-1162	Fisher Scientific Co.	233.58
75-1182	Advance Services, Inc. as assignee of Conversational Voice Terminal	3,306.68
75-1186	Earl T. Fatlan, Jr.	82.79
75-1207	Telex Computer Products	3,766.50
75-1210	Rockford Memorial Hospital	544.79
75-1229	Salvation Army Booth Memorial Hospital	7,065.91

75-1233	Archer Cemetery Corporation	3,175.00
75-1245	Henson Robinson Company	772.02
75-1266	Catholic Charities of the Archdiocese of Chicago	1,803.67
75-1270	Gina Pieroni	2,761.35
75-1280	Montgomery Ward and Co.	153.11
75-1310	Grand Spaulding Dodge	9.49
75-1341	Professional Playhouse	656.00
75-1361	Parkview Orthopaedic Group, S.C.	761.00
75-1491	Azzarelli Construction Company	9,352.08
76-7	Addressograph-Multigraph Corp.	217.26
76-50	Air Illinois	282.00
76-125	Material Service Corporation	165.58
76-126	Material Service Corporation	807.28
76-128	Material Service Corporation	56.90
76-145	Harry Projansky	215.52
76-169	Cheryl Fonfara	280.00
76-170	Christine Oberle	150.00
76-200	Stephen M. Brown	7,432.36
76-228	S. Stein and Company	680.00
76-234	Richard J. Styner	3,648.96
76-244.245	James J. Matejka, Jr., M.D.	30.00
76-265	Teledyne Oster	59.90
76-272	Shirley Davis	294.00
76-330	Addressograph-Multigraph Corp.	270.10
76-386	Grand-Elm AMC/Jeep Inc.	188.61
76-390	Midwest Court Reporting Service	235.00
76-395	County of Cook, a body politic and corporate	847,256.71
76-424	Addressograph-Multigraph Corp.	2,740.07
76-457	Public Electric Construction Company	4,101.36
76-499	Addressograph-Multigraph Corp.	34.50
76-509	Helen Dzendzel	28.06
76-513	Frank H. Hedges, M.D.	85.00
76-519	Moe Rattner	16.34
76-521	Lutheran Welfare Services of Illinois	822.00
76-533	Buske Lines, Inc.	20.49
76-537	Commonwealth Edison Company	1,291.66
76-545	P. N. Hirsch and Company	6,997.19
76-557	Minnie Franklin	216.50
76-558	Mary Shegog	228.00
76-576	Holiday Inn of Joliet South	37.80
76-582	Catholic Charities of the Archdiocese of Chicago	679.10
76-605	Leila P. Adkins	322.78

76-627	Ogle County Sheriffs Dept.	846.59
76-634	The McHenry County Association for the Retarded, an Illinois Not For Profit Corporation, a/k/a Pioneer Center for the Exceptional	10,316.66
76-644	Public Electric Construction Co.	11,420.00
76-645	Minda Manor	73.42
76-647	Thomas J. Banbury and John C. Banbury d/b/a Hart, Banbury and Banbury	337.70
76-652	Central Baptist Children's Home	5,505.00
76-657	North Aurora Center	2,445.25
76-659	Institute for Applied Behavioral and Psychiatric Research	400.00
76-664	Airtite, Inc.	1,320.94
76-689	J. P. Miller Artesian Well Company	4,346.85
76-691	Edgewater Hospital	5,227.67
76-693	Roselle Dodge, Inc.	271.23
76-694	Chicago Professional College	166.50
76-705	Kleer-Rite Corporation	182.30
76-707	Lutheran Welfare Services of Illinois, Tom Crane	401.25
76-708	Little Angels Nursing Home	1,241.90
76-709	Riveredge Hospital	19,259.13
76-714	Evans-Mason, Inc.	18,870.00
76-725	Chicago Hospital Supply Corp.	396.00
76-754	Standard Oil Division Amoco Oil Company	193.60
76-770	Holiday Inn of Hillside	467.65
76-782	Safety-Kleen Corporation	238.75
76-786	A. A. Khalili, M.D.	595.00
76-795	County of LaSalle	350.00
76-805	Wm. F. Meyer Company	125.00
76-815	James W. Malloy	125.00
76-825	Revere Electric Supply Company	306.55
76-826	Pritzker Children's Psychiatric Unit of Michael Reese Hospital & Medical Center	13,118.39
76-830	International Business Machines Corporation	7,681.30
76-833	International Business Machines Corporation	7,681.30
76-838	Sharon K. Marsh	676.60
76-849	Berwyn Lumber Company	201.20
76-853	Edna Rodriguez	1,061.80
76-855	St. Joseph's Hospital	170.24
76-867	North Aurora Center	401.30

76-888	Pritzker Children's Psychiatric Unit of Michael Reese Hospital & Medical Center	3,225.07
76-890	Fisher Scientific Company,	1,083.00
76-892	Lois W. Kriedle	1,340.00
76-902	The Chesapeake & Ohio Railway Co.	148.54
76-906	Mildred Tatum	1,116.50
76-915	William F. Henebry, M.D.	630.00
76-931	Licata Moving & Storage Company	240.00
76-932	John Leroy Richards	244.08
76-946	Sheraton Inn—Springfield	32.40
76-960	IBM Corporation	78.65
76-962	Crown Supply Company	298.96
76-964	Forrest M. Bowman	1,467.04
76-975	Juanita Chandler	3,191.34
76-976	Troy Lee Johnson	1,985.41
76-980	Midwest Air Products, Inc.	44.07
76-984	Guardian Angel Home of Joliet, Illinois	7,535.76
76-987	Northeast Community Hospital	5,697.42
76-995	William Koss	202.05
76-1002	Music Shoppe of Normal, Inc.	1,097.98
76-1031	Rt. Rev. Msgr. William J. Cassin	279.29
76-1034	Riveredge Hospital	1,573.60
76-1036	Lawrence Maintenance Service Co.	3,400.33
76-1037	Lawrence Maintenance Service Co.	2,457.00
76-1042	Federal Signal Corporation	7,113.90
76-1044	Institute for Contemporary Education	663.00
76-1047	Sun Oil Company	32.85
76-1053	General Electric Company	959.60
76-1061	Bismarck Hotel	253.62
76-1066	Joyce E. Tucker	628.34
76-1067	Donna L. Burns	134.97
76-1079	Central Office Equipment Company	347.52
76-1081	Central Office Equipment Company	332.18
76-1095	Amoco Oil Company	102.77
76-1097	Steven W. Schlitz	35.92
76-1098	Prudential Auto Parks, Inc.	3,000.00
76-1099	Prudential Auto Parks, Inc.	1,000.00
76-1105	Harry Boulhanis	78.54
76-1106	Willia Mae Baker	17.30
76-1114	I.B.M. Corporation	26.40
76-1128	Shirley Ulrich	80.00
76-1149	Dale W. Sunderland. M.D.	200.00

76-1153	Hank Jennings	283.80
76-1154	Susie B. Hargrave	195.00
76-1162	County of Will, a body Politic and Corporate	11,509.43
76-1163	Marjorie Honig	136.81
76-1168	Aamco Transmissions	226.00
76-1202	Washington Hilton Hotel	155.25
76-1207	Charles G. Stott and Company, Inc.	21.46
76-1210	John Sexton Contractors Co.	121.00
76-1233	Federal Signal Corporation	2,096.25
76-1244	James L. Foster	275.00
76-1245	James Divito	275.00
76-1247	Thomas Eddleman	175.00
76-1248	Paul Patterson	175.00
76-1253	Rockford Neurosurgical Services	50.00
76-1258	Shirley Flaherty	124.45
76-1264	Fisher Scientific Company	136.98
76-1266	Al's Standard Service	73.37
76-1269	Gulf Oil Corporation	13.72
76-1274	Webster-Cantrell Hall	1,485.75
76-1281	Associated Service and Supply Co.	524.00
76-1291	Scribner & Co.	562.50
76-1303	Lindquist Construction Co.	6,998.20
76-1309	Pitney Bowes	172.50
76-1311	Sargent-Welch Scientific Company	642.85
76-1319	Mid-States Industrial <i>Corp.</i>	10.03
76-1328	Minnesota Mining and Manufacturing Company	12,504.00
76-1330	Edward Don & Co.	39.90
76-1331	Holiday Inn of Elgin	283.38
76-1336	Human Resources Research Organization	3,170.40
76-1340	Casio, Inc.	87.96
76-1343	Motorola, Inc.	12,925.00
76-1348	Mobil Oil Credit Corporation	13.65
76-1357	Suburban Tribune	174.40
76-1365	IBM Corporation	148.00
76-1370	Mobil Oil Corporation	3,080.00
76-1378	Litsinger Motor Company	892.20
76-1383	Computer Machinery Corporation	285.00
76-1388	Chicago Litho Products Company, Inc.	907.93
76-1393	West Publishing Company	120.00
76-1399	Berry Bearing Company	513.81
76-1403	Earl S. Leimbacher, M.D.	50.00
76-1404	Continental Electrical Construction Co.	558.00

76-1407	Hillyer Foster Home	633.00
76-1408	Triarco Arts & Crafts—J. C. Larson Division	147.02
76-1410	William B. Gile, Sr.	103.71
76-1411	Edward Neville	1,775.00
76-1414	Polaris-EZ Go Car Division of Textron	45.73
76-1417	Watercort's Department Store	30.86
76-1418	George Terborg	50.00
76-1425	James A. Hayashi	106.22
76-1428	National Association of Boards of Pharmacy	4,000.00
76-1433	Alexander Lumber Co.	350.00
76-1436	V-Tip Inc.	91.50
76-1437	Rush Anesthesiology Group	225.00
76-1438	Galowich, Galowich, McSteen and Phelan	752.50
76-1443	The Constable Equipment Company, Inc.	1,716.00
76-1452	Donald W. Maxfield	2,687.79
76-1453	Charles E. Trott	2,687.79
76-1462	West Publishing Company	48.00
76-1468	Allan S. Feingold	62.50
76-1471	The Donnelly Reporting Co., Inc.	125.40
76-1472	Egyptian Telephone Cooperative Association	85.35
76-1477	Robert H. Pierce, M.D.	34.00
76-1485	DuPage Reporting Service, Inc.	106.80
76-1488	Sid and Son Scrap Yard, Inc.	210.00
76-1494	William K. Gommel, Jr.	46.00
76-1497	Booth Memorial Hospital	892.05
76-1498	Eugene V. Tanski, M.D.	600.00
76-1507	Metro Reporting Service, Ltd.	218.70
76-1508	Metro Reporting Service, Ltd.	150.00
76-1509	Metro Reporting Service, Ltd.	67.50
76-1510	Metro Reporting Service, Ltd.	329.50
76-1518	Merkels, Inc.	145.00
76-1519	Elizabeth Roberts	557.53
76-1521	Chicago Tribune Company	348.45
76-1522	Midwest Crankshaft & Bearing	460.81
76-1526	Gamma Photo Labs, Inc.	812.60
76-1527	Sunny-Land Nursery	629.00
76-1528	Auto Electric Service	372.54
76-1530	Lawson Products, Inc.	46.39
76-1537	Federal Material Company	109.98
76-1538	W. R. Meadows, Inc.	306.70
76-1540	James Johnson	518.00
76-1542	Gailey Eye Clinic, Ltd.	469.00

76-1543	Paul J. Campeggio	139.70
76-1549	Merkels, Inc.	227.90
76-1552	Institute of Lettering & Design	915.27
76-1553	Houghton Mifflin Co.	36.30
76-1561	Commonwealth Edison Co.	4,659.03
76-1564	Sentry Drugs	85.24
76-1572	3M Business Products Sales, Inc.	540.00
76-1577	Walter Lawson Children's Home	5,245.64
76-1580	Northern Illinois Gas Company	1,192.10
76-1585	Carla A. Lawrence	289.00
76-1589	Xerox Corporation	1,016.91
76-1590	Xerox Corporation	448.00
76-1593	I. B. M. Corporation	151.05
76-1600	I. B. M. Corporation	648.00
76-1602	Powell School, Inc.	244.80
76-1605	Silver Cross Hospital	325.00
76-1608	Tiny Tot Pre-School	130.00
76-1615	Hanover Disposal	64.00
76-1618	CCT Press, Ltd.	378.99
76-1620	Federal Signal Corporation	2,129.60
76-1628	Texaco, Inc.	148.00
76-1633	State Employees Retirement System of Illinois	1,114.10
76-1640	American Rail Heritage, Ltd.	508.05
76-1654	Dr. Edward W. Lazzar	15.00
76-1656	Raymond E. Robertson, M.D.	5,104.00
76-1663	Southeastern Illinois Electric Cooperative, Inc.	114.27
76-1667	Huston-Patterson Corporation	761.28
76-1675	Dorothy Hart, Executrix of the Estate of Walter V. Hart, Jr.	1,734.46
76-1678	Carol S. Norris	31.20
76-1681	Mayfair Supply Co.	63.00
76-1682	Optical Scanning Corporation	361.22
76-1692	Huston-Patterson Corporation	27.50
76-1701	Woodstock Dev. Enterprises Inc. d/b/a Sheltered Village	1,106.00
76-1706	Chicago Tire and Rubber Co., Division of B. F. Goodrich Co.	91.74
76-1710	Booth Memorial Hospital	417.60
76-1713	Todd Vincent	100.08
76-1720	Larry Barger	100.08
76-1721	Padco Community Hospital	381.44
76-1727	Follett Educational Corporation	4.21

76-1729	Jacquelynn Crenshaw, Daughter & Principal Surviving Heir of Ernestyne F. Maxey	10.99
76-1735	George R. Kozuch	11.50
76-1736	Southside Communications, Inc.	900.00
76-1740	National Association of State Agencies for Surplus Property Overseas Fund	3,433.00
76-1750	Klingberg Schools	371.14
76-1751	Klingberg Schools	2,757.23
76-1752	James M. Rockford, Superintendent of Police, Chicago Police Department	553.93
76-1755	Nasir J. Ahmad, M.D.	250.00
76-1757	Harry E. Thompson Associates	829.53
76-1761	Goodyear Tire and Rubber Company	1,098.83
76-1768	Rockford Memorial Hospital	192.00
76-1769	Rockford Memorial Hospital	370.00
76-1771	Local Electric Company	997.35
76-1775	American District Telegraph	420.39
76-1776	Lee Wards	150.16
76-1778	Carroll Seating Co., Inc.	2,944.00
76-1779	Uniroyal, Inc.	258.53
76-1787	Barnes Hospital	585.70
76-1790	Holiday Inn, Carbondale	12.08
76-1795	Klingberg Schools	951.62
76-1815	Drs. Betz, Drain, Jander, Inc.	85.00
76-1817	Mattie A. Harris	303.08
76-1820	Hinckley & Schmitt	225.83
76-1825	Shell Oil Company	165.78
76-1837	Forest Hospital	2,025.99
76-1838	George J. London Memorial Hospital	3,803.15
76-1844	Hunt's Pharmacy	148.02
76-1845	Division Center Corporation	993.90
76-1857	Scientific Products	267.55
76-1860	General Electric Company	247.14
76-1861	Commonwealth Edison Company	118.00
76-1869	Arlington Electric Cons., Co.	8,766.41
76-1872	General Electric Company	401.28
76-1880	Quality Sheet Metals, Inc.	500.00
76-1881	Browning-Ferris Industries of Illinois, Incorporated	50.00
76-1883	Palmer House Company	54.63
76-1884	United Medical Laboratories, Inc.	120.00
76-1891	Holiday Inn	45.69

76-1892	Jack S. Saleh, M.D., S.C.	650.00
76-1895	A. J. Gerrard & Company	626.35
76-1899	Dawn Allen, Et Al.	2,219.37
76-1905	St. Joseph's Hospital	157.00
76-1908	Alarm Direction Systems	126.15
76-1913	Eric E. Graham	135.00
76-1914	George E. Fagan, M.D.	270.00
76-1915	Peterson Battery & Electric, Inc.	105.64
76-1919	St. Francis Hospital - Medical Center	450.00
76-1930	Boelkens International	260.79
76-1931	Board of Trustees of Southern Illinois University, A Body Politic and Corporate	7,420.05
76-1933	North Aurora Center	68.20
76-1940	Schiller & Frank, Architects	231.20
76-1941	Darc Home	5,243.72
76-1945	Phillips Brothers, Inc.	3,486.00
76-1953	I. B. M. Corporation	26.40
76-1954	I. B. M. Corporation	23.80
76-1956	American Association of School Administrators	12.80
76-1958	De Paul University	1,875.00
76-1960	The University of Chicago	500.00
76-1964	Paul Morimoto, M.D.	25.00
76-1967	Air Illinois, Inc.	30.64
76-1968	Air Illinois, Inc.	71.37
76-1970	Air Illinois, Inc.	1,786.48
76-1971	Air Illinois, Inc.	91.92
76-1972	Air Illinois, Inc.	8.40
76-1974	Air Illinois, Inc.	122.56
76-1977	Air Illinois, Inc.	30.64
76-1980	Air Illinois, Inc.	190.56
76-1983	Air Illinois, Inc.	183.84
76-1989	Air Illinois, Inc.	81.65
76-1993	St. Joseph Hospital	163.00
76-1996	Michael Reese Hospital & Medical Center	1,081.00
76-1999	St. Joseph Hospital	336.55
76-2004	Emkay Building Corporation	900.00
76-2005	Allendale School for Boys	1,620.00
76-2017	Rockford Cardiology Assoc.	149.00
76-2018	Leo Theodoro, M.D.	2,520.00
76-2019	Quincy Newspapers, Inc.	139.40
76-2021	Allendale School for Boys	1,500.00
76-2022	Atlantic Richfield Company	164.39
76-2023	St. Anthony Memorial Hospital	10.00

76-2029	South Suburban Hospital	572.95
76-2030	St. Francis Hospital and Medical Center	391.40
76-2032	American District Telegraph	452.91
76-2037	Roland E. Yamine, M.D.	445.00
76-2039	I. B. M. Corporation	49.50
76-2041	I. B. M. Corporation	26.40
76-2042	I. B. M. Corporation	124.95
76-2044	Michael F. and Betty J. Fischer	128.38
76-2045	Clyde Dial Construction, Inc.	567.49
76-2047	Goldblatt Brothers, Inc.	79.98
76-2052	Kristich Sports & Awards	138.60
76-2057	U. S. Internal Revenue Service	2,500.25
76-2062	Michael' Reese Hospital	2,460.00
76-2065	James Clark, M.D.	407.50
76-2068	Youth Guidance	100.00
76-2071	Dawsons Home Center	423.02
76-2077	Roger Creighton Associates	2,349.45
76-2078	Coles Publishers, Inc.	16.00
76-2082	Robert L. Prentice, M.D.	293.00
76-2084	Joliet Audio Vestibular Laboratories, Inc.	37.50
76-2085	I. B. M. Corporation	472.31
76-2086	I. B. M. Corporation	119.33
76-2087	I. B. M. Corporation	415.43
76-2092	Social Action Research Center, Inc.	3,440.00
76-2096	St. Francis Hospital	150.00
76-2098	P. N. Hirsh and Company	47.64
76-2102	Goodyear Tire & Rubber Company	453.57
76-2110	St. Joseph Hospital	1,277.80
76-2113	Edward A. Utlaut Memorial Hospital	95.50
76-2119	McGee & Mackin, Inc.	6,388.00
76-2122	Metro Reporting Service, Inc.	88.95
76-2126	Alice B. Ihrig	85.06
76-2128	Baker - Hauser Company	335.50
76-21-0	Zep Manufacturing	201.85
76-2131	J. O. Pollack	643.50
76-2132	Ancha Electronics, Inc.	14,920.90
76-2134	Cenco Medical/Health Supply Corporation	2,331.46
76-2140	Peoria Hilton Hotel	19.96
76-2143	Eastman Kodak Company	313.20
76-2147	Manfred Kydan, M.D.	75.00
76-2148	R. V. Monahan Construction Co.	1,364.00
76-2159	Ronald B. Peters	465.64
76-2163	Rice Tire Service	73.14

76-2168	E. A. Ulrich, M.D.	140.00
76-2173	Glass Specialty Company, Inc.	109.68
76-2174	Doctors Memorial Hospital	1,290.20
76-2176	Inland Supply Corporation	193.69
76-2191	G. E. Sedlacek, D.V.M.	833.00
76-2195	John Palincsar	72.00
76-2197	Booth Memorial Hospital	461.00
76-2198	Booth Memorial Hospital	1,905.38
76-2205	Glass Specialty Company, Inc.	89.84
76-2207	Kutten Oil Company	1,773.61
76-2208	Medical Surgical Clinic	117.00
76-2209	Northwestern Business College	246.50
76-2212	St. Francis Hospital - Medical Center	840.00
76-2213	Pantagraph Printing	2,160.62
76-2215	Henriette R. Wolsco by Phyllis E. Ludman	365.92
76-2216	Mid-West fie-School	340.00
76-2222	Eugene V. Tanski, M.D.	935.00
76-2224	Alexander-Smith Academy	3,850.00
76-2231	Fox-Stanley Photo Products, Inc.	34.79
76-2233	St. Joseph Hospital	26.70
76-2234	William B. Skaggs, M.D.	137.50
76-2242	University of Iowa	109.75
76-2243	The County of Randolph	1,111.00
76-2245	St. Joseph Hospital	132.00
76-2252	Stephen S. Buckley	270.00
76-2254	Sister Kenny Institute	195.50
76-2255	Chicago Urban Day School	15.00
76-2257	Braniff Airways, Inc.	386.96
76-2258	Minneapolis Clinic, Ltd.	534.95
76-2259	Abbott Hospital	2,278.54
76-2264	McNeil Laboratories, Inc.	467.23
76-2269	Kermit T. Mehlinger, M.D.	90.00
76-2270	University Computing Company	8,594.22
76-2280	Crum Drugs, Inc.	275.19
76-2287	John E. Reid and Associates	60.00
76-2289	Dorothy L. Kuhl, M.D.	420.00
76-2294	Henry A. Petter Supply Company	190.08
76-2299	Richard Roth	152.97
76-2308	Minnesota Mining and Manufacturing Company	3,402.80
76-2309	Jones Clinic	19.00
76-2313	Clyde L. Simmons	42.50
76-2314	Texaco, Incorporated	172.77
76-2318	Springfield Clinic	10.50

76-2322	John Sajovec	540.00
76-2335	Smithsonian Science Information Exchange, Inc.	76.00
76-2337	Waukegan Public Schools	1,243.20
76-2343	St. Mary's Hospital	459.75
76-2345	National Children's Rehabilitation Center	885.25
76-2348	Hortensia Williams	177.37
76-2360	Pedro J. Lopez, M.D.	15.00
76-2363	Institute of Logopedics	420.85
76-2365	Institute of Lettering & Design	1,165.61
76-2367	H. W. Carpenter Handling Equipment, Inc.	91.10
76-2368	Board of Governors of State Colleges and Universities, A Body Politic and Corporate Acting on Behalf of Western Illinois University	2,958.46
76-2369	Glass Specialty Company	31.83
76-2370	Material Service Corporation	264.02
76-2375	West Aurora High School, District 129	7,200.00
76-2382	St. Vincent Memorial Hospital	26.00
76-2388	Peoria Surgical Group, Ltd.	600.00
76-2391	Hamilton County Rehabilitation Center	512.40
76-2392	Joliet Junior College	82.00
76-2397	Optical Scanning Corporation	286.00
76-2399	Social Science Education Consortium, Inc.	15.00
76-2406	Patricia Dixon	303.00
76-2407	Medical Aid Training Schools, Inc.	310.00
76-2408	Sanders Associates, Inc.	1,449.00
76-2411	Richard A. Price	40.08
76-2418	Rehabilitation Institute of Chicago	3,161.47
76-2419	Office Supply Company, Inc.	121.83
76-2421	A. A. Khalili, M.D.	190.00
76-2430	Mental Health Association of Greater Chicago	513.85
76-2433	Warren Achievement Center CLF	250.92
76-2434	Holiday Camera Company	6.28
76-2442	Motorola, Inc.	66.50
76-2444	Saunders and Company	14.18
76-2445	Saunders and Company	75.14
76-2446	Saunders and Company	55.45
76-2449	Saunders and Company	33.76
76-2451	Motorola, Inc.	13.30
76-2453	St. Mary's Hospital	673.36
76-2456	Daws Drug Store	17.94
76-2457	Motorola, Inc.	239.40
76-2466	Orthopaedic & Arthritis Clinic	288.00
76-2467	Orthopaedic & Arthritis Clinic	106.00

76-2468	St. Vincent Community Living Facility	338.60
76-2472	Marklund Home	2,969.84
76-2473	David W. Mack, M.D., S. C.	57.25
76-2476	Karoll's Inc.	4,763.29
76-2482	Fontanbleu Nursing Center	87.00
76-2483	Eason Motor Company, Inc.	284.76
76-2489	Laurel Haven Company	782.76
76-2493	Carrier Machinery Systems Division	681.50
76-2495	Davenport Builders	8,847.54
76-2499	Carl Kelly Manson	65.52
76-2500	Rehoboth Church of God Day Care Center	309.60
76-2503	UNIVAC	444.82
76-2505	Leo F. Miller, M.D.	132.00
76-2506	Little City Foundation	4,431.31
76-2508	Foley Tire Center	344.80
76-2512	William E. Webber	50.40
76-2514	Marie Holland	36.08
76-2517	Salem Children's Home	507.00
76-2518	Raymond E. Lee, D.P.M.	240.00
76-2520	Carey's Furniture Company	4,449.50
76-2521	Carey's Furniture Company	6,493.95
76-2524	Transworld Airlines, Inc.	136.73
76-2525	Transworld Airlines, Inc.	321.00
76-2528	Lora J. Svaniga	30.00
76-2531	Little City Foundation	3,115.75
76-2536	M. W. Albert, D.D.S.	100.00
76-2539	Milestone, Incorporated	782.80
76-2541	Robert H. Meyer	52.89
76-2543	Curtin Matheson Scientific, Inc.	75.00
76-2546	Little City Foundation	2,652.00
76-2547	Sutcliffe Pharmacy, Inc.	70.14
76-2548	Demco Educational Corporation	221.85
76-2549	A. B. Dick Products Company	7,905.00
76-2551	Office Supply Company, Inc.	24.80
76-2554	Mager & Gougelman, Inc.	355.00
76-2556	Elim Christian School	2,642.18
76-2557	Delta Data Systems Corporation	167.20
76-2559	John B. Mann & Son , Inc.	79.57
76-2561	Prismo Universal Corporation	2,966.00
76-2563	Little City Foundation	349.86
76-2564	Litainger Motor Company	74.35

76-2565	Linnus S. Pecaut	100.00
76-2570	Oxy-Dry Corporation	13.50
76-2571	Rock Island County Association For Retarded Citizens	529.20
76-2575	Texaco, Inc.	33.97
76-2576	Roberts and Porter, Inc.	210.05
76-2582	Xerox Corporation	164.20
76-2590	Memorial Medical Center	595.81
76-2591	Memorial Medical Center	1,455.30
76-2596	Botanical Consultants Inc.	146.00
76-2598	The Baby Fold	474.00
76-2600	Central Illinois Road Equipment Company	17,698.00
76-2601	Beverly Farm Foundation	1,307.50
76-2603	Scientific Products Division of American Hospital Supply Corporation	247.42
76-2604	Prismo Universal Corporation	1,635.00
76-2605	Lewis University	280.00
76-2607	Little City Foundation	3,040.00
76-2611	Sam C. Sit	45.08
76-2612	Donald C. Norwood	30.00
76-2614	Hansen, Nakawatase, Rutkowski, Wynn, Inc.	773.99
76-2617	Wolfe, Rosenberg & Assoc., Inc.	196.80
76-2619	Beck's Book Store	74.15
76-2623	Central Office Equipment Company	605.33
76-2624	Central Office Equipment Company	2,875.60
76-2625	Bonnie Hildreth	35.00
76-2626	Rochelle J. Wilson	174.34
76-2627	John C. Merrick	1,059.38
76-2632	Browne-Morse Company	2,454.00
76-2635	Vaughn-Jacklin	293.50
76-2637	Ravenswood Hospital Med. Center	2,106.55
76-2639	Fox Photo, Inc.	72.00
76-2640	Champaign County Mental Health Center	315.00
76-2644	Prentice-Hall, Inc.	19.95
76-2645	Donnelly Reporting Company	85.29
76-2649	Amoco Oil Co.	23.13
76-2650	Xerox Corp.	60.00
76-2654	Identatronics	248.25
76-2655	Spoon River FS, Inc.	79.94
76-2656	Arthur L. Reynolds, DDS	237.00
76-2657	Robert L. Ferguson	30.24
76-2660	Dale W. Sunderland, M.D.	150.00

76-2661	Summit Furniture Company	560.00
76-2663	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	214.20
76-2664	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	15.75
76-2665	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	15.75
76-2667	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	58.80
76-2668	Robert R. Smith	4.77
76-2670	Saybrook-Arrowsmith Community Unit No. 11	10.64
76-2671	Joseph V. Karaganis	5,180.00
76-2673	Forrest Poultry Company	37.68
76-2675	American Institute of Engineering and Technology	1,176.00
76-2677	American Institute of Engineering and Technology	269.50
76-2681	St. Coletta School	18,815.20
76-2693	Chicago College of Commerce	393.20
76-2694	Hicklin GM Power Company	63.36
76-2697	Freeman Fashion Academy	2,261.11
76-2698	Grange Dodge Inc.	102.73
76-2700	Specialized Services, Inc.	5,224.24
76-2705	Kankakee Industrial Supply Co.	223.73
76-2706	Kankakee Industrial Supply Co.	902.23
76-2707	Kankakee Industrial Supply Co.	285.95
76-2708	Kankakee Industrial Supply Co.	103.23
76-2711	Prismo Universal Corporation	23,539.12
76-2713	Commonwealth Edison Co.	2,205.71
76-2714	Ginn & Company	1,365.68
76-2715	Mary Kathryn Markle, M.D.	150.00
76-2716	Texaco, Inc.	11.09
76-2717	Texaco, Inc.	17.39
76-2718	Texaco, Inc.	4.57
76-2719	Jefferson Stationers, Inc.	33.57
76-2720	Schnepf & Barnes Printers, Inc.	4,949.85
76-2721	Dr. A. A. Palow Medical Services Corporation	100.00
76-2722	Dr. A. A. Palow Medical Services Corporation	235.00
76-2725	Padco Community Hospital and Dr. G. Y. Wong	147.39
76-2728	Karoll's Inc.	3,349.08
76-2733	Laurel Haven School	1,539.96
76-2734	Bailey Supply Company	463.75

76-2735	William J. Karaganis	171.50
76-2737	Millicent Systems, Inc.	23,248.50
76-2739	University of Illinois, Department of Civil Engineering, D. E. McCulley	310.72
76-2740	Ellen Brya	20.00
76-2741	June Crackel	16.25
76-2742	Virginia R. Friederich	335.78
76-2743	George W. Tauxe	93.21
76-2744	J. E. Stalimeyer	283.80
76-2745	R. A. Schmitz	266.08
76-2746	Milton O. Schmidt	234.04
76-2747	Robert J. Mosberg	348.92
76-2748	Millard S. McVay	199.50
76-2749	Carl S. Larson	1,240.05
76-2750	Benjamin A. Jones, Jr.	132.27
76-2751	Barclay G. Jones	122.40
76-2752	W. L. Hull	46.81
76-2753	John P. Hipskind	1,187.88
76-2754	George W. Harper	78.75
76-2755	German Gurfinkel	685.88
76-2756	Virginia R. Friederich	788.98
76-2757	A. G. Friederich	778.05
76-2758	G. H. Fett	479.68
76-2759	C. A. Eckert	1,358.01
76-2760	Lawrence E. Doyle	578.59
76-2761	Barry J. Dempsey	418.50
76-2762	June Crackel	257.13
76-2763	Edward S. K. Chian	64.38
76-2764	E. L. Broghamer	573.75
76-2765	Robert W. Bohl	45.57
76-2766	Loretta Bayne	259.88
76-2767	John E. Baerwald	93.78
76-2768	A. L. Addy	1,356.16
76-2772	Xerox Corporation	789.10
76-2773	Prismo Universal Corporation	13,352.50
76-2782	Jefferson Stationers, Inc.	49.86
76-2791	Memorial Medical Center	509.90
76-2792	Memorial Medical Center	1,092.97
76-2795	Price, Priddle, Kim & Housman, P.S.C.	225.00
76-2798	Environmental Enhancement, Inc.	11,792.50
76-2799	Ford Tractor Operations, Ford Motor Company	2,535.00
76-2800	Nadeem Tahir	540.00

76-2803	Eastman Kodak Company	442.00
76-2805	Illinois Fruit & Produce Corp.	422.00
76-2806	Bell and Gustus, Inc.	1,627.50
76-2808	Total Design Industries, Inc.	285.00
76-2809	Material Service Corporation	303.13
76-2810	Brighton Auto Parts	103.36
76-2811	Kewaunee Scientific Equipment Corporation	18,508.00
76-2820	Kemmerer Village	2,586.52
76-2822	Edwin E. Fliege	181.95
76-2823	Wallace's Book Stores, Inc.	97.35
76-2824	A. J. C. Messenger Service	61.00
76-2827	Salem Children's Home	1,049.16
76-2828	Byrd-Watson Drug Company	101.38
76-2829	Thomas D. Eddleman	494.05
76-2831	William D. Merwin, D.D.S.	450.00
76-2832	Beling Engineering Consultants	3,546.75
76-2834	Flamingo Beauty College	250.00
76-2841	Cabrini Hall	419.50
76-2845	Mary Joan McCabe, M.D.	280.00
76-2848	Tratt Clinic, S.C.	430.00
76-2852	Elgin Key and Lock Company	148.49
76-2856	Automotive Spring, Inc.	776.81
76-2857	Elliott Company	941.94
76-2858	Harold J. Heffernan, D.V.M.	93.90
76-2860	William L. Leslie	75.03
76-2861	UARCO, Incorporated	4,308.54
76-2862	John P. Carney	100.00
76-2864	Klingberg Schools	7,339.52
76-2867	Suhail Ghattos, M.D.	195.00
76-2868	St. Mary of Providence School	34,059.23
76-2879	Gordon & Sexton Funeral Home	480.00
76-2880	Marlene Wilson	120.00
76-2881	International Harvester Company	20,198.88
76-2883	Robert J. Durkin	426.00
76-2886	Certified Equipment & Manufacturing Company	8,600.00
76-2896	Wade & Dowland Office Equipment, Inc.	796.00
76-2897	Winston Manor Convalescent and Nursing Home	1,668.00
76-2898	Jack A. Brunnenmeyer	275.84
76-2900	Memorial Medical Center	490.44
76-2902	Memorial Medical Center	423.98
76-2903	Memorial Medical Center	1,121.64

76-2906	Burton Shatz, M.D.	150.00
76-2907	St. Mary's Hospital	69.50
76-2908	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	15.75
76-2909	Floyd Gustafson	200.00
76-2912	Xerox Corporation	322.40
76-2914	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	26.26
76-2915	George S. Grimmet & Company	838.00
76-2916	Phillips Brothers, Inc.	130.00
76-2917	Olivetti Corp. of America	86.40
76-2920	Prismo Universal Corporation	1,354.00
76-2921	Texaco, Inc.	57.50
76-2922	Paul Truynonis	101.52
76-2923	Lutheran Child & Family Services	108.46
76-2925	William A. Morris	103.50
76-2927	A. B. Dick Products Company	27.00
76-2928	Sweden House Lodge	15.49
76-2929	Rogers Pontiac	676.28
76-2932	Henry A. Nikodem	6.80
76-2935	Goldie B. Floberg Center for Children	172.44
76-2936	Gulf Oil Corporation	24.02
76-2937	Memorial Hospital	330.90
76-2939	Holiday Inn South Springfield, Illinois	32.02
76-2941	Stanley & Sons Plumbing, Heating & Cooling	250.00
76-2943	PPG Industries, Inc.	10.82
76-2945	City of Chicago	541.86
76-2947	Thomas Benedick	44.16
76-2951	Couch & Heyle	2,434.00
76-2954	Francis X. Marotta	64.00
76-2955	Gloria J. Grygo	26.40
76-2956	Romney International Hotels, Inc. d/b/a Ramada Inn, Marion, Illinois	42.70
76-2957	Carroll County Culligan	17.50
76-2958	Neuropsychiatry, S. C.	335.00
76-2959	Neuropsychiatry, S. C.	664.00
76-2960	Banner Disposal Service	18.26
76-2962	I. B. M. Corporation	1,369.54
76-2963	I. B. M. Corporation	200.00
76-2964	I. B. M. Corporation	612.00
76-2966	I. B. M. Corporation	602.25
76-2968	I. B. M. Corporation	279.36

76-2970	Polyvend, Inc.	159,856.83
76-2971	Stewardson Clipper	18.20
76-2972	Rochelle's Inc.	3,874.60
76-2977	General Electric Co.	58,745.70
76-2978	General Electric Co.	37,905.80
76-2979	Bazzell-Phillips & Assoc., Inc.	2,920.78
76-2980	Vredenburg Lumber Company	893.13
76-2982	Raid Quarries Division, Medusa Aggregates Co.	148.84
76-2985	I. B. M. Corporation	1,752.35
76-2991	City of East St. Louis, Illinois	660.00
76-2992	L. B. Foster Company	5,708.25
76-2993	The Donnelly Reporting Co.	117.45
76-2998	Xerox Corporation	849.17
76-3005	Parke, Davis & Co.	1,054.00
76-3006	Kankakee Industrial Supply Company	791.20
76-3008	A. B. Dick Products Company	5.40
76-3011	Grant Hopper Landmark Ford	242.46
76-3013	Rockford Memorial Hospital	314.52
76-3014	Central Illinois Public Service Company	952.88
76-3015	Tektronix, Inc.	3,864.75
76-3018	Central Illinois Light Co.	295.08
76-3019	Xerox Corp.	187.12
76-3022	Douglas L. Foster, M.D.	1,635.00
76-3025	Reed-Randle Tractors, Inc.	297.80
76-3026	Walnut Cheese Division, Avanti Foods Co.	80.50
76-3030	Champaign Signal and Lighting Company, Inc.	887.75
76-3031	Will County Sheltered Workshop, Inc.	240.00
76-3035	Great Lakes Microfilm Company	200.00
76-3036	Schwartz Bros. Ins. Agency, Inc.	428.75
76-3039	I. B. M. Corporation	1,180.00
76-3040	Mary J. Morrissy	172.25
76-3044	Xerox Corporation	271.03
76-3045	Carson Pirie Scott & Company	100.00
76-3046	Catholic Social Service	1,726.09
76-3047	Lawrence H. Cooper, D.D.S.	6,075.00
76-3049	Datapro Research Corporation	12.00
76-3052	John Willis Hall 3	42.75
76-3056	Presney, Casper & Feurer	1,816.00
76-3057	Myers Families	324.00
76-3059	West Publishing Company	323.50
76-3061	Short Oil Company	800.43

76-3062	Romney International Hotels Inc., d/b/a Ramada Inn, Marion, Illinois	31.50
76-3066	Kolb Brothers Drug Company	17.60
76-3069	Shaw Ready Mix Company	17.60
76-3070	Polyvend, Inc.	168,430.84
76-3071	North Aurora Center	292.96
76-3072	McCann Construction Company	599.00
76-3074	Union Medical Center	1,011.00
76-3076	Betty S. Gallery	92.00
76-3079	John C. Resnick	63.90
76-3080	GMC Truck & Coach Div. General Motor Corp.	11,630.00
76-3081	GMC Truck & Coach Division General Motors Corporation	5,453.40
76-3082	Paul E. Prunkard	35.60
76-3084	Frank J. Crowley (City of Chicago Comptroller)	226.99
76-3085	Henry B. Garcia	104.57
76-3087	Mr. and Mrs. Ralph Cooper	88.00
76-3088	Institute of Logopedics	300.00
76-3089	Willet Truck Leasing Company	6,487.72
76-3092	Midwest Visual Equipment Co.	554.00
76-3094	Karoll's Inc.	330.24
76-3095	West Publishing Company	10.00
76-3097	St. Therese Hospital	125.95
76-3101	Thomas W. Auner, M.D., Ltd.	46.00
76-3102	Marvin Aren, M.D.	86.00
76-3103	W. J. Eniry	12.00
76-3105	Metro Reporting Service	164.90
76-3106	DHEW, PHS, CDC, National Institute for Occupational Safety & Health	200.00
76-3107	Ray Graham Assoc.	1,839.60
76-3108	Clark Oil and Refining	37.50
76-3118	Martin Brothers Implement Company	1,141.00
76-3119	Methodist Medical Center	99.00
76-3121	Ozark Air Lines	254.92
76-3125	Shoss Radiological Group, Inc.	8.50
76-3126	New Hope Living and Learning Center, Inc.	338.58
76-3127	Kiamesha Concord, Inc.	56.00
76-3130	Office Supplies, Inc.	14.96
76-3132	Jack Domnitz, M.D.	79.50
76-3133	Labeau Bros., Inc.	123.91
76-3135	The Donnelly Reporting Company	99.31
76-3138	Howard Johnson's Motor Lodge	69.62

76-3140	Skelly Oil Company	32.25
76-3141	Skelly Oil Company	6.97
76-3148	Ronald Shlensky	304.15
76-3151	Catholic Social Service	42.00
76-3152	Catholic Social Service	444.00
76-3153	Catholic Social Service	60.00
76-3154	Catholic Social Service	244.02
76-3156	Catholic Social Service	372.00
76-3157	Catholic Social Service	144.00
76-3160	Bismarck Hotel	84.31
76-3169	Marietta C. L. Bailey	144.00
76-3170	Scholastic Book Service	4.40
76-3171	Morrison-Knudsen Co.	76,000.00
76-3172	Sylvana Y. Menendez	40.00
76-3173	Brokaw Hospital	3,228.21
76-3179	Kishwaukee Community Hospital	501.55
76-3181	Peoples Transfer Incorporated	464.49
76-3183	Graue-Sawicki Motor Co.	682.60
76-3191	Tim Swan II, Special Assistant Attorney General	200.00
76-3192	Chris Hoerr & Son Company	181.81
76-3195	Smitty's Welding	270.65
76-3200	Belleville Area College	41.95
76-3204	Ronald W. Johnson, M.D.	240.00
76-3206	Richard J. Lambert	579.79
76-3207	Factory Motor Parts, Inc.	213.13
76-3209	Beckman Instruments, Inc.	3,448.00
76-3216	Holy Family Hospital	27.00
76-3223	Ramada Inn	92.64
76-3228	Walter L. Frank, M.D.	25.00
77-1	Scientific Products, Division of American Hospital Supply Corporation	32.84
77-6	Middleton Associates, Inc.	303.75
77-11	Richard Telingator, M.D.	40.00
77-13	General Electric Company	29,196.00
77-20	P. M. Schmidt, M.D.	285.10
77-21	Radio Shack	146.46
77-29	Exxon Company of U.S.A.	26.53
77-31	Community Unit School District No. 3	564.00
77-39	Ozark Air Lines	277.47
77-44	General Electric Company	55,073.25
77-50	Howell Engineering Equipment Co.	516.00

77-52	A. B. Dick Company	74.60
77-54	Polyvend, Inc.	36,860.66
77-58	I.B.M. Corporation	144.05
77-60	I.B.M. Corporation	195.84
77-64	Beatrice M. Szaltis	78.09
77-73	Bill Burrell Builders, Inc.	13,900.00
77-74	A.S.C. Medi Car Service, Inc.	24.00
77-82	Lewis & Clark Community College	175.00
77-85	Sanders Associates, Inc.	3,111.07
77-87	I.B.M. Corporation	108.72
77-93	Armstrong Builders	665.00
77-94	Armstrong Builders	487.86
77-95	Armstrong Builders	707.29
77-99	Howard Z. Gopman	600.00
77-100	Moore Research, Inc.	418.50
77-101	Deborah J. Borokak	296.50
77-102	Supervisor of Assessments	865.00
77-107	Ozark Air Lines, Inc.	31.37
77-112	Bradner Smith & Company	1,320.68
77-115	Dalton, Dalton, Little, Newport, Inc.	2,700.00
77-123	Kinder-Care Learning Center, Inc.	1,854.90
77-126	Carole H. Malony	181.83
77-133	Plastic Industries, Inc.	8,673.60
77-135	Excepticon of Illinois, Inc. d/b/a Champaign Children's Home	4,028.52
77-137	The Brown's Schools	848.64
77-141	Chas. Todd, Inc.	25.56
77-145	Holiday Inn of Olney	15.75
77-146	Johnston Lumber Co.	85.24
77-148	The Killian Corporation	1,796.68
77-150	3 M Business Products Sales	173.28
77-153	American Hospital Supply	593.62
77-165	Maninfior Reporting Service	202.50
77-167	Jones & Laughlin Steel Service Center	3,182.80
77-168	Carpetland U.S.A.	10,950.00
77-170	Mohr Value Center	87.86
77-173	General Electric Company	1,653.00
77-174	General Electric Company	342.80
77-175	General Electric Company	15,191.00
77-176	General Electric Company	6,302.15
77-177	General Electric Company	51,000.00
77-178	General Electric Company	22,035.00

77-185	The Brown School	1,200.00
77-187	General Electric Company	4,465.00
77-193	Kenneth Moore, Sheriff of Effingham County	49.00
77-194	Buckley Construction Co., Inc.	10,000.00
77-204	Delta Air Lines, Inc.	152.00
77-213	Steven Hargan	88.00
77-217	Federal Aviation Administration	3,749.90
77-218	Walter Lawson Children's Home	4,787.15
77-219	Friedli, Wolff & Pastore	1,197.80
77-226	Northwest Airlines, Inc.	678.35
77-229	Fishman's Sporting Goods Company	191.68
77-230	Office Supply Company	549.75
77-234	Goodyear Tire & Rubber Company	403.27
77-240	Litsinger Motor Company	292.78
77-244	Service Transportation Lines, Inc.	19.43
77-250	Sun Oil Company	14.23
77-252	Sun Oil Company	7.60
77-255	Jewish Hospital of St. Louis	24.00
77-256	Blaine J. Spies	80.39
77-262	Champaign Children's Home	2,116.00
77-264	Uniroyal, Inc.	103.65
77-273	Sheraton Rock Island Motor Inn	34.66
77-274	Simplex Time Recorder Company	17.45
77-277	International Harvester Company	13,250.24
77-282	Service Transportation Lines	12.95
77-297	Southern Illinois University at Carbondale	400.00
77-312	Sperry Univac	168.74
77-313	McClure Motors, Inc.	559.75
77-317	Ferry & Henderson Architects, Inc.	350.00
77-321	Adolescent & Adult Psychiatry, Inc.	200.00
77-336	Decatur Memorial Hospital	183.00
77-337	Neuropsychiatry, S.C.	254.00
77-339	Burroughs Corporation	379.31
77-340	Meadows Shelter Care, Inc.	390.00
77-356	Richard M. Terry, M.D.	79.00
77-360	State House Inn	28.39
77-367	National Quotation Bureau, Inc.	63.00
77-390	Marshall Katzman, M.D.	180.00
77-406	Downer Construction	496.48
77-414	Amerford International Corporation	272.03
77-418	Federal Aviation Administration	2,195.60

77-419	Fewell Construction Company	7,926.00
77-426	Hub Clothiers, Inc.	2,511.60
77-428	Electrified Appliances Company	157.75
77-437	Telephone Answering Service, Inc.	126.50
77-439	Matheson Gas Products	506.50
77-448	Addison-Wesley Publishing Co.	185.15
77-449	American Management Associations	18.34
77-470	ITT Bailey Technical School	170.90
77-472	West Publishing Company	94.00
77-473	Sperry Univac	1,035.00
77-486	Portable Tool Sales, Inc.	9,699.00
77-495	L. E. Peabody & Associates	7,523.03
77-520	Texaco, Inc.	100.68
77-522	Washington University	629.00
77-527	Passavant Area Hospital	310.88
77-531	General Electric Company	1,417.00
77-537	International Harvester Company	241.01
77-538	International Harvester Company	115.08
77-545	Laurel Haven School	7,486.70
77-556	Amber Ridge School, Inc.	746.83
77-572	Dak Industries, Inc.	674.24
77-575	Institute of Logopedics, Inc.	326.64
77-592	Kenneth R. Rogers	1,674.80
77-606	Hagerty Brothers Company	189.06
77-615	Servco Equipment Company	3,398.00
77-650	Martin Luther Home	638.00
77-675	Jackson County, Illinois	435.57

STATE COMPTROLLER ACT—REPLACEMENT WARRANTS

If the Comptroller refuses to draw and issue a replacement warrant, or if a warrant has not been paid after one year from date of issuance, persons who would be entitled under Ch. 15, Sec. 210.10, Ill.Rev.Stat., to request a replacement warranty may file an action in the Court of Claims for payment.

75-395	Dwight Township High School, District No. 230	\$500.00
75-443	Reeves Walgreen Agency	3.16
75-702	Bernice A. Herrman	281.42
75-1034	Herman Milton Tyson	1037.30
75-1279	Al's Food Town	214.84
75-1299	Helen J. Dunne	227.64
76-58	Robert E. Timm	31.26
76-91	Pamela S. Schultz	25.10
76-129	Luis G. Perez Reyes, M.D.	83.00
76-299	Verdell and Zelma Davis	63.00
76-434	Robert George Hansen	294.91
76-459	Rosie Hudson and Western North Currency Exchange, Inc.	89.00
76-476	Sibyl Whitley	330.70
76-511	Edward A. and Elda T. Cogana	78.00
76-515	Raymond E. and Carole Davidson	125.48
76-516	Zia Ul Haq	57.20
76-522	David J. Szott	10.31
76-528	Fate W. Piercy	272.81
76-530	Josue A. Beltran	25.42
76-541	Frank and Melitta Trytek	22.67
76-544	Mary Samos, M.D.	120.00
76-548	Lawrence G. and Gloria Rita Davis	100.00
76-550	Zayre Department Store	265.32
76-553	Emma Schmielfenig	360.00
76-561	Florence Zabawski	384.25
76-566	Curtis and Bessie Davis	28.00
76-568	Clara J. Gaston	22.00
76-591	Larry W. and La Ricu M. Kammerer	74.95
76-594	Vivencio R. Battung, M.D.	433.00
76-600	Richard A. and Kathleen A. Michalak	92.64
76-610	Randy Modicue	57.99
76-615	Chris Quinn	3.97
76-623	Philip P. and Mary Leahy	6.62
76-629	Cecile Shier	201.03
76-632	Mary T. Sheehy	24.63
76-646	I lus C. Wood	162.27
76-658	Clery D. Garelli	136.01
76-667	State Bank of Lake Zurich	27.51
76-668	Maureen A. Burke	20.88
76-669	Nick and Vasiliki Koutouzou	20.79

76-670	John E. and Sherry L. Mecum	99.65
76-682	Keith Marrin	25.37
76-684	Louis and Ludean Drew	74.88
76-685	Daisy M. Sharp	19.49
76-702	Adressograph-Multigraph Co.	6,396.47
76-715	Lesley Staskon Connors	25.13
76-742	Alex and Delorres Potocki	134.14
76-754	Standard Oil Division Amoco Oil Company	193.60
76-756	Nick and Ann Gleboff	19.14
76-773	Condred Huff	50.38
76-792	Cottage and 47th Currency	25.00
76-820	Alan A. and Susan E. Arroyo	23.50
76-821	Grace C. Estelle	260.68
76-828	Robert Barry Farrell	69.06
76-836	Marzell Todd	28.14
76-849	Benvyn Lumber Company	201.20
76-875	Westminister Leasing Corporation	56.16
76-881	Edna Du Bose	13.53
76-882	Fidel Rodriquez	54.00
76-896	Jewel Food Stores	464.00
76-917	Shulmistras and Company	63.38
76-920	Kathryn Medema	115.19
76-1015	Gregory M. Smith	14.96
76-1075	Delbert and Carol Burke	19.33
76-1089	John E. and Rhoda E. Muchmore	73.14
76-1090	Michael T. and Nelda J. Steinert	61.13
76-1094	Joseph and Frances Miserendino	100.05
76-1142	Kaytown Drug Company	266.67
76-1145	American National Bank and Trust Company	276.00
76-1160	Charles R. and Billie J. Hillenburg	98.95
76-1161	Marie E. Griffin and Marcella M. Kloc, Co-Executrices of the Estate of Ernest F. Auburn, Deceased	154.21
76-1178	Floyd R. and Elaine Skendziel	84.00
76-1186	Elizabeth G. Minarcik	23.99
76-1196	Anne Elliott Snow	2,000.00
76-1197	Julie A. Kogan	22.02
76-1220	Vincent L. Brizgys	20.96
76-1221	Stephen Ulbert	24.85
76-1226	Mary E. Walker	60.86
76-1234	Donald W. McMahon, as Executor of the Estate of Raphael N. Feldkamp, Deceased	19.88

76-1237	Patrick J. Melady	21.01
76-1252	James E. and Jerlean C. Sumler	32.45
76-1256	Grace Lai	76.85
76-1260	Karen Rose	10.00
76-1262	Patricia J. Zydowsky	1.77
76-1272	Kenneth and Barbara Hustel	13.00
76-1280	Japan Machine Tool Trade Association	19.00
76-1282	Wesley and Hazel Burtley	60.00
76-1284	Sylvia Schultz	124.97
76-1302	James P. Connelly, Administrator Estate of Mary Flynn, Deceased	70.00
76-1337	Karen G. Ephraim	23.88
76-1339	First State Bank of Round Lake	63.00
76-1347	Mobil Oil Credit Corporation	469.97
76-1360	Joseph and Mary Healy	106.02
76-1364	Mike and Matilda Kerpan	5.00
76-1369	Leonard H. and Mary R. Lauchman	43.52
76-1379	Walter J. Peterson	12.41
76-1382	Lorraine Page	4.80
76-1389	Farnsworth Associates	31.00
76-1390	Farnsworth Associates	10.00
76-1391	Farnsworth Associates	26.00
76-1392	Farnsworth Associates	640.00
76-1416	Mary T. Foster	19.78
76-1434	Debra Michaels	41.63
76-1454	American National Bank	63.69
76-1457	Richard and Lillian Francis	32.15
76-1459	James Spencer	50.09
76-1466	Jane G. Wallower	181.62
76-1474	Kathy Tyrell	16.79
76-1483	Hugh R. and Janet Dollar	40.59
76-1489	Robert C. and Mary E. Storm	48.46
76-1506	Delfino Maya	36.49
76-1525	Anthony Elefteria Papoutsakis	35.00
76-1531	Dorothy Holmes	61.64
76-1533	Med Center Pharmacy	1,466.29
76-1534	Roosevelt and Floria Williams	104.95
76-1536	Mae L. Ketterman	Not Compensable
76-1541	Merle D. and Doris F. Holly	15.62
76-1545	Irwin Widen	1,026.10
76-1546	David Wandell, Administrator of the Estate of Charles A. Cotter, Deceased	758.06

76-1547	Naperville Rental Center	43.25
76-1548	Julia R. Waller	32.02
7611550	Merkels Incorporated	350.82
76-1553	Med Center Pharmacy	1,466.29
76-1555	Lloyd Oscar Larson	193.34
76-1562	Larry and Wanda Turner	57.43
76-1570	Kevin L. Field	24.99
76-1571	Vera R. Lookbaugh	282.76
76-1573	Marvin J. Smith	16.11
76-1575	Janet Verfurth	10.13
76-1576	Lawrence R. Gerber	9.73
76-1584	Marina Alvarez	25.38
76-1588	Harvey Sanders	24.00
76-1598	Alfred E. and Elizabeth Albrecht	22.24
76-1603	Allen R. Cohen, Trustee in Bankruptcy for the Estate of Reverend Norman R. Senski, Bankrupt No. 74B5189	335.31
76-1604	Robert Thomas Samat	24.96
76-1607	Rose L. Negrelli	25.28
76-1609	Luis A. and Maria A. Torres	41.94
76-1624	Oscro Drug, Inc.	109.94
76-1625	Oscro Drug, Inc.	149.55
76-1626	Leila G. Hicks	14.16
76-1627	Harry Jaffe	170.00
76-1629	Mary E. Gramme	897.35
76-1637	Katherine Marrs	11.00
76-1638	Lawrence Dzialo	18.05
76-1639	Deborah A. Bortoli	24.45
76-1642	Esther P. Mocega-Gonzales	25.00
76-1645	Harold F. and Marjorie B. Maris	67.15
76-1646	Illinois College of Podiatric Medicine	9,225.50
76-1650	John L. and Susan P. Sullivan	35.16
76-1655	Rose L. Jones	39.90
76-1661	Continental Illinois National Bank and Trust Company of Chicago	58.37
76-1665	Kathleen A. Rosko	19.45
76-1669	Floyd Thibodeau, Executor of the Estate of Gary Lee Thibodeau	6,538.55
76-1671	Grant V. Finan	24.78
76-1673	Laddie J. and Kathryn A. Forejt	74.83
76-1677	Vincent B. Lavery	91.34
76-1679	John W. Allyn, Executor of the Estate of Nelle M. Allyn, Deceased	2,905.26

76-1680	Robert M. Eckhouse, Administrator of the Estate of Emily E. Waldman, Deceased	412.42
76-1683	Albert D. Cady	22.79
76-1684	Robert K. Wilson	37.71
76-1685	W. Hugh Rowland	12.23
76-1698	Richard Allen Munchmeyer	16.91
76-1703	Ionnis A. and Kyratay Dousias	21.74
76-1704	Gary Feieresel	16.78
76-1709	Rambo Funeral Home	167.49
76-1712	Richard M. and Ada M. Weinstein	31.00
76-1715	Monroe Division, Litton Industries	1,059.10
76-1719	Frank and Sonia Montalto	50.47
76-1728	Rosemary Townsend	22.00
76-1730	J. C. and Freddie Davis	110.73
76-1732	Robert J. and Carol A. Filczer	11.00
76-1733	Dorothy Buckingham	85.91
76-1734	Sue Marten, M.D.	180.00
76-1739	Luis E. Luna, M.D.	25.00
76-1742	Golmon and Fannie Whitaker	6.21
76-1743	Thelma G. Fullerton	30.12
76-1745	Floyd and Jennie Shumpert	16.00
76-1746	Rosa U. Bonghart, M.D.	873.40
76-1747	Rosa U. Bonghart, M.D.	873.40
76-1748	William G. and Phyllis C. Christie	97.58
76-1754	Lorraine Hodgdon Collier	191.00
76-1756	Fred Shapiro, M.D.	35.00
76-1758	Dorothy Hart, Executrix of the Estate of Walter V. Hart, Jr. Deceased	383.33
76-1759	Helen M. Ravenstein	44.00
76-1766	Manuel and Eleanro Gudino	42.31
76-1777	Charity McAdory	222.93
76-1780	Peter and Hope Hernandez	15.25
76-1781	Peter and Hope Hernandez	98.00
76-1782	Donald H. and Catherine R. Busam	123.39
76-1789	Ralph and Dorothy M. Wartick	22.00
76-1791	Clarence and Katie Carey	148.76
76-1806	Ruth Butnis, Executrix of the Estate of Anna Bevinski	200.69
76-1812	James K. and Jean M. Johnson	16.00
76-1816	Laverne Mejdrich	19.76
76-1818	Frederick O. and Martha R. Sanderson	16.00
76-1819	George E. and Jacqueline Marton	55.00

76-1823	Edna M. Lawrence	24.73
76-1824	E. John Sierocinski	87.22
76-1826	James H. and Helene A. Dalton	17.73
76-1835	Frank E. and Elizabeth Lopresti	3.00
76-1840	Thomas C. and Margaret M. Mitchell	40.00
76-1841	Bruce E. Browne	19.26
76-1842	M. P. Shiu, Jr.	5.90
76-1849	Leland Riechers	219.30
76-1851	David R. Bischoff	16.69
76-1852	Raj Satya Dutt	17.74
76-1853	Clyde McKinley	25.00
76-1855	John and Mary McGlashin	70.20
76-1856	Thomas E. and Eunice F. Chomicz	64.16
76-1865	Barbara Dul	23.00
76-1866	Leonard J. Pinzino	12.00
76-1867	Eugene Copp	37.47
76-1868	Bonnie J. Zimmerman	42.36
76-1871	Teachers Retirement System	693.91
76-1873	Eloise M. Smith	96.59
76-1874	Lewis and Clark Community College	1,456.00
76-1889	Mary Bohan McIsaac	32.09
76-1890	Elisha White	58.93
76-1894	Diane T. Mitchell	13.00
76-1897	Raymond J. and Gertrude C. Ludkowski	43.00
76-1909	Roger Charlier	1,601.55
76-1910	Michael Keenan	24.76
76-1911	Millard E. and Rosie Marie Mabry	80.74
76-1913	Eric E. Graham	135.00
76-1917	Alfred N. Jordan	50.07
76-1920	Metro Plumbing, Inc.	6,042.27
76-1927	Jewel Food Stores	206.00
76-1928	Mary E. Livak	70.15
76-1929	Karl W. and Virginia M. Heinrich	68.00
76-1932	Franklin and Victoria Jones	21.00
76-1935	Barbara Ann Murphy	14.00
76-1937	John H. and Helen D. Kimsey	48.00
76-1938	Bernice Unti	445.67
76-1944	Emma Kucharski	224.11
76-1946	Hilda M. Wanhapiha	15.35
76-1947	Duncan Galleries	120.00
76-1950	Sam and Veronica Messina	36.00
76-1957	Christina Rags	20.87

76-1959	Miriam L. Carey, Executrix of the Estate of Thomas E. Carey, Deceased	71.59
76-1961	Elizabeth A. Johnson	25.00
76-1962	Raul and Fanny Guerra	50.00
76-1963	Casimir and Sofia Grzywacz	35.13
76-1984	Walter U. and Nancy L. London	31.92
76-1988	Clay Adams Division of Becton	65.00
76-1990	Omer and Catherine Peterson	6.00
76-2000	Robert and Lucille Curtis	33.09
76-2001	Martha A. Haugh	13.98
76-2002	Edward and Oretta Palekas	171.00
76-2003	Kenneth J. and Nancy Majewski	38.52
76-2006	Benny and Donna Baltazar	26.08
76-2007	Mrs. D. F. Cunningham	50.00
76-2008	Angeline L. Hickey	73.87
76-2011	Jeannie M. Williams	34.68
76-2012	Marvin J. Johnson	71.30
76-2016	Grant County Bank	120.65
76-2017	Rockford Cardiology Association	149.00
76-2024	Herman Sievering	378.81
76-2025	Norman Laundry	49.05
76-2026	John and Dolores Wicherek	7.00
76-2027	Anna Broeckl	152.25
76-2028	Ruth A. Feltes	20.05
76-2031	Samuel J. Mirsky	182.00
76-2033	Stephen J. Ross	15.49
76-2034	State Bank of East Moline	15.00
76-2035	Philip C. Corrado, Jr., Executor of the Estate of Richard J. Fencl	2,187.12
76-2036	William and Bonnie Petersen	115.54
76-2043	Donald J. and Carol A. Holtschlag	13.27
76-2051	Mary W. Shields	38.00
76-2053	James E. and Cleta Modglin	24.19
76-2055	Robert S. and Marla J. Riner	175.00
76-2056	American National Bank and Trust Company of Chicago	342.97
76-2060	William R. and Helen N. McKinley	42.00
76-2066	Donald and Lillian Baggerly	48.00
76-2067	Roytype Division, Litton Industries	15.20
76-2069	Steven C. Wooley	11.10
76-2074	Mary Voros	28.93
76-2076	Mary A. Nelson	12.00

76-2080	Richard Riehl	21.90
76-2081	Robert Lynn Solomon	55.19
76-2088	Henry and Gloria Hollingsworth	140.25
76-2089	John M. Davis	1,149.33
76-2091	Investors Diversified Services, Inc.	198.52
76-2094	Sara B. Hiser	192.64
76-2097	Carol G. Block	76.14
76-2099	Romeo and Beatriz Francisco	24.59
76-2104	Duane and Virginia E. Thompson	40.87
76-2105	Duane Bernard Thompson	13.26
76-2108	Guillermo and Lucina Arellano	69.91
76-2111	Joseph F. and Jean L. Vavrick	23.15
76-2115	Shirley A. Anderson	24.99
76-2117	Ronald E. McCloud	75.00
76-2118	Margaret M. Casey	22.64
76-2120	Agustin J. Prado	23.29
76-2121	Joanne T. Shields	19.13
76-2123	RCA Corporation	1,120.00
76-2129	William E. Homsted	49.52
76-2135	F. Bruce and Eileen S. Westgate	63.03
76-2136	Able and Willing Plumbing, Heating, Sewerage	1,875.00
76-2137	Bessie S. Cooper	294.17
76-2141	Cynthia R. McCollister	14.60
76-2142	Celsto and Alma Fridge	2.00
76-2150	L. M. and Thelma Alford	45.00
76-2153	Ernest and Shirley Christmas	11.00
76-2157	James E. and Eileen Womack	125.17
76-2160	Richard W. and Sandra J. Eckblade	214.79
76-2161	Sheila Estvanik	21.51
76-2164	Albert W. Ray, Jr., M.D.	419.00
76-2166	Kristin L. Larimore	95.73
76-2169	Cary W. Wamsley	24.98
76-2170	Charlotte A. Huhta	18.31
76-2172	William E. Piggott	68.73
76-2175	Grove Press, Inc.	122.55
76-2177	Rosa Jaramillo	30.78
76-2178	Gordon M. Johnson	25.05
76-2179	Dean S. Vorrhees	119.98
76-2180	Irrie L. Selvie	98.07
76-2183	Roberto Socorro Ramirez	19.00
76-2184	Ismenia J. Sinko	993.00

76-2185	Thomas E. Harrington, Executor of the Estate of Ameda Ruth King, Deceased	694.73
76-2186	Cathleen Campo	23.44
76-2188	Nancy Asther Fischer	19.53
76-2192	Rose Rossi	24.02
76-2193	Sidney C. and Audre M. Mennes	149.00
76-2194	Elsie R. Ufferman	24.48
76-2200	Marilyn Mitchell	29.04
76-2201	Charles H. and Millicent S. Whitmore	998.50
76-2203	Sharon E. Blakesley	21.00
76-2204	Memorial Medical Center	223.24
76-2211	Verbena Z. Boone	52.08
76-2221	Dorothy G. Brown	83.93
76-2223	Esther Trombetta	73.95
76-2225	Jean McAleese	277.67
76-2230	Jewel Food Companies	288.76
76-2232	L. R. Dillard d/b/a Crestwood Paving and Construction Company	232.26
76-2235	Patricia K. O'Keefe	23.83
76-2236	Donald R. and Carol J. Gemelli	35.66
76-2239	Iver G. Bjurman	70.00
76-2241	John E. and Mary E. Carpenter	36.00
76-2246	Sharon A. Conway	24.66
76-2253	Kenneth R. Smith	109.50
76-2256	R. Bradley and Patricia H. Jude	39.82
76-2265	Anne M. Stark	218.96
76-2266	Garry M. Kvistad	37.00
76-2267	Sanford's Food Mart	317.00
76-2268	William Pulaski	55.00
76-2272	Jewel Food Stores Division of Jewel Companies, Inc.	12.01
76-2274	A. H. Cook d/b/a Rock Island Typewrite Company	31.25
76-2281	Alan L. Driskill	25.11
76-2282	Kenneth C. McDonough	243.56
76-2283	Kenneth C. McDonough	238.23
76-2284	Kenneth C. McDonough	178.36
76-2285	Telesila Conty	36.00
76-2286	George Schimkus	71.17
76-2288	Lawanda Thompson	128.45
76-2295	Frank and Victoria Dziube	5.89
76-2296	Elizabeth M. Goergen	24.53

76-2297	Bea K. Dalinis	32.00
76-2298	Robert J. Dalinis	16.36
76-2300	Lynn K. Coltran	18.72
76-2301	Harry Busse	50.00
76-2302	Frances S. Sauter	39.25
76-2303	Clotelle Griffin	118.26
76-2304	Hillmans, Inc.	7.84
76-2305	Marjorie Luxem	25.00
76-2307	Richard L. and Elizabeth Wheeler	50.20
76-2310	John T. Hunter	223.39
76-2316	John Andolsek	45.56
76-2317	Jewel Food Stores, Division of Jewel Companies, Inc.	206.16
76-2324	Lawrence A. Jacobson, Administrator of the Estate of Albert M. Zimmerman	37.00
76-2327	Kishan Chand, M.D.	47.50
76-2328	Harlan and Terry Monroe	394.13
76-2329	Guadalupe Guzman	34.00
76-2330	Gilbert and Alyce Hagerty	227.00
76-2331	Laurie S. Meyer	5.90
76-2332	Stanley and Harriet Sarniak	28.50
76-2333	Caroline Winkelmann	50.45
76-2340	Athanasia Gavrilis	263.55
76-2341	John J. and Dorothy L. Martinek	98.85
76-2342	Dorothy L. Martinek	151.30
76-2349	Loris A. Soderberg	100.14
76-2350	Carolyn M. McGehee	83.79
76-2351	Anna A. Schneider	57.24
76-2352	Patricia Steele	28.62
76-2353	Hasmulch J. and Smita H. Shah	16.67
76-2359	Clark W. Tuncle	25.00
76-2364	Harlen C. Handel	50.00
76-2371	George C. and Violet J. Hoff	47.57
76-2374	Wayne V. and Kathie M. Whitney	49.97
76-2376	Verne A. Schwager, M.D.	87.00
76-2377	Audrey Sebben, Executrix of the Estate of Rudolph M. Woodshank, Deceased	20.96
76-2378	T. O. and Ruth H. Paulsen	28.44
76-2379	Shabbir J. Merchant	26.04
76-2380	John Konetzky	18.32
76-2381	L. Milton McClure	19.00
76-2383	Thomas Marion	12.00

76-2384	Francesco Paolo Valenti	49.02
76-2386	Denis and Therese Esposito	60.05
76-2387	John C. and Jayne A. Tessling	31.86
76-2394	Brian B. and Lesley C. Strange	21.36
76-2400	Thornton Millwork Company	180.00
76-2402	Oak Ridge Cemetery	62.00
76-2405	Horace A. and Romana L. Napp	64.35
76-2409	Wood River Township Hospital	228.10
76-2413	William R. Brodrecht	11.11
76-2414	William R. and Verna Brodrecht	30.63
76-2415	Josephine Grelck	320.00
76-2416	John H. and Barbara J. Conley	17.95
76-2417	Donald Lee Wolkerson, Jr.	20.66
76-2420	Carl Porcaro	66.20
76-2422	Etilo and Mary Micheletti	28.20
76-2423	Charles O. and Marian E. Williams	72.00
76-2424	Angel L. Ortiz	48.00
76-2426	Simone Shimaitis	146.68
76-2427	Lafayette Sims	27.30
76-2428	Harvey R. Wise	163.40
76-2431	Jack and Lillian Schloneger	42.70
76-2432	Monty B. and Nina L. Wagner	46.00
76-2435	Charles H. Reese	24.84
76-2438	Eloise Crawford	30.00
76-2441	Mason H. and Lorene F. Simpson	99.50
76-2447	Chicago City Bank and Trust Company	174.12
76-2448	Jesus and Estela C. Aquirre	49.08
76-2454	Cary E. Chaney	3.00
76-2455	William J. and Mary Oremovich	36.89
76-2463	Charles J. Rahn	27.00
76-2464	Rosie M. Childress	264.84
76-2465	H. C. Shah	12.80
76-2469	Rollie Zumwalt	79.99
76-2471	Joe Distasio	25.07
76-2475	Homer O. Harvey	8.70
76-2477	Clarence W. Winebeck	108.46
76-2479	Edith M. Adams	300.00
76-2480	Joan F. Sherman	46.40
76-2481	Brian L. Thompson	11.93
76-2488	Karen Szewczuk	57.00
76-2494	Sandra Rose Leahy	320.23

76-2498	Peter Lazarovits	100.00
76-2504	Raul A. Pelaez, M.D.	25.00
76-2510	Opal Keenan	273.83
76-2513	Shirley M. Atkins	71.51
76-2515	Edward J. Kinney, M.D.	25.00
76-2516	Karen Santini	24.67
76-2522	William H. Phillips	157.87
76-2526	Angelos Theofanis	29.43
76-2527	Marion Oeckinghaus	4.00
76-2532	Elvida R. Mjoen	238.74
76-2533	Russell C. Novak	25.00
76-2534	Katherine B. Webster	50.00
76-2535	Regina Phillips	25.15
76-2538	J. C. Penny Company	572.20
76-2544	University Park Press	7.60
76-2545	Valentino M. Mustapich	142.85
76-2550	Jerry D. and Janet K. Brockhouse	5.61
76-2553	Emanuel Scherer, O.D.	1,318.65
76-2555	Richard W. Anderson	24.79
76-2566	Ray P. and Antoinette J. Jepsen	90.00
76-2567	Will R. and Shirley A. Wright	54.61
76-2577	Melinda Ann Correa	24.30
76-2579	Laura Stasieluk, Administratrix of the Estate of Alfred J. Kolodziej, Deceased	38.49
76-2580	Dwight C. Parrott	25.00
76-2581	Lynn Cetwinski	21.00
76-2595	Village Treasurer of Concord	152.03
76-2597	Rosemary Gratace	12.66
76-2609	Robert Bedsole	15.62
76-2610	Robert L. Davis, Jr.	14.78
76-2621	Mary L. Ashcroft	24.95
76-2622	Diane and Shaw M. Lee	22.43
76-2630	Barbara A. Brooks	25.19
76-2631	William J. David	27.00
76-2638	Centreville Tom Boy Super Market	193.00
76-2642	Lynn M. and Maria L. Pates	35.00
76-2643	Special Education District of McHenry County	3,458.00
76-2646	Arthur Treacher's Fish and Chips, Inc.	33.43
76-2647	Barclays Bank International, Ltd.	176.55
76-2658	Union L N G Industries, Inc.	157.20
76-2659	Dorothy M. Blanchard	25.66

76-2679	Louise Marrissette	25.00
76-2685	Gerald J. Sullivan	13.20
76-2686	C. V. Robinson	312.67
76-2689	Lyle L. and Francine J. Novak	60.82
76-2692	L. C. Hines	100.50
76-2696	Loyola University of Chicago	1,310.00
76-2701	Mary Hautpave	79.24
76-2703	Indiana Harbor Belt R. R. Company	177.38
76-2710	George C. and Evelyn C. Clink	13.12
76-2712	Tony Marchio	87.79
76-2729	Vincent Sajalecki	36.90
76-2770	Jean Fuchs	429.98
76-2771	Steve Leonard, Administrator of the Estate of James Wendlandt, Deceased	58.53
76-2775	Northern Trust Company, Executor of the Estate of Ruth Shillestad	52.48
76-2776	Northern Trust Company, Co-Trustee of the Myrtle L. Holzapfel Trust	1,233.65
76-2777	Northern Trust Company, Executor of the Will of Tom E. Hough, Deceased	244.13
76-2778	Northern Trust Company, Executor of the Will of Rose S. Gilbert, Deceased	66.93
76-2779	Northern Trust Company, Agent for the Estate of Effie M. Schmuck, Deceased	10.47
76-2794	William L. Nickel	18.06
76-2797	E and L Construction and Maintenance Company, Inc.	996.70
76-2802	Ulrick Pardo, M.D.	487.20
76-2804	Javier Irma Ruclas	91.00
76-2830	Hillman's, Inc. (For Rosie Mae Hudson)	24.70
76-2877	Sheryl Sue Schudel	138.58
76-2878	Mid City Plumbing Supply Company	10.53
76-2892	Darwin and Patrice Oswald	81.17
76-2899	Joseph and Marion Fiandaca	64.61
76-2918	Alma Jackson Fields	78.65
76-2924	Edward W. Petrosius	11.51
76-2931	Merlynn J. Fessler	41.59
76-2940	Bank of Pontiac	2.95
76-2942	Shirlee Mullinix	41.03
76-2946	Creative World Schools	100.00
76-2948	Philip and Virginia Farrell	15.00
76-2949	Kathryn C. Mangion, Laurane Ritenhouse Deputy Signer	167.19

76-2950	Ludwig C. Myrthen	25.00
76-2953	Robert H. Waddell	227.50
76-2976	Eldon Minor	37.27
76-2983	Hsiang Shih Chou	27.66
76-2987	Margaret M. Mussatto, Administratrix of the Estate of Peter Rovano, Deceased	360.00
76-2988	Lyle J. and Francine J. Novak	31.00
76-2989	Dennis and Virginia Donati	93.00
76-2990	Gustavia Patterson	296.77
76-3000	Joan E. Dunn	25.40
76-3001	David Smith	7.33
76-3002	Orval Gibbs	24.00
76-3003	Christiana Setaro	127.00
76-3012	Edith Fletcher	80.00
76-3016	Betty Cavanaugh	44.72
76-3017	Leon E. Young	21.00
76-3023	Lionel Renard	6.54
76-3028	Rose Kirn, Executrix of the Estate of Michael Buczkowske	460.75
76-3029	Walter A. and Anna D. Drozd	12.77
76-3043	The First National Bank of Springfield, Executor of the Estate of Robert H. Kooiker, M.D.	70.85
76-3050	Jonell L. Tsaros	7.68
76-3051	Alice Grindstaff	23.54
76-3063	Ilita Hristov	24.63
76-3064	Robert and Jean Burns	11.13
76-3083	Harriet C. Postawa	25.83
76-3091	R. Spencer and Isabel D. Davis	190.20
76-3093	Kenneth W. Strong	87.22
76-3098	Louis W. Farber	19.42
76-3099	P. A. and Estella P. Washburn	69.96
76-3104	Bruce Hartel	45.44
76-3112	Olivia Jackson	50.04
76-3129	Louis De Rossi	47.62
76-3142	Warren and Linda Bjork	34.67
76-3150	Dennis and Carol Lento	727.18
76-3160	Bismarck Hotel	84.31
76-3162	John F. McCarthy	37.92
76-3205	Northern Trust Company	120.00
76-3210	Donald Marc Lampert	7.63
76-3211	Elliott W. Williams	24.00

76-3213	Association of African Studies Program	100.00
76-3219	James R. and Phyllis Delap	79.00
76-3220	Sandra S. Dalberth	17.78
76-3229	Arthur A. LaTour	520.38
76-3230	Walter J. Zielinski	16.97
76-3231	Academic Press, Inc.	532.40
76-3232	James A. George	24.89
76-3233	Glenn D. and Shirley A. Squires	74.14
76-3234	Jose Ilagan	24.61
77-2	Michael R. Spongberg	24.98
77-3	Roberto and Consuelo Arroyo	119.10
77-4	William A. and Elizabeth Metzger	209.16
77-8	Leona R. Rupert	63.00
77-17	Paul and Enedina Rodriguez	26.42
77-18	William Hirschberg	157.65
77-19	Jashbhai K. Patel	27.07
77-24	Warren B. Waddell	17.49
77-25	Kenneth G. Kombrink, Treasurer, McLean County Bar Association	1,200.00
77-30	Patricia A. Babb	13.48
77-31	Community Unit School District No. 3	564.00
77-33	Bernard A. Fried, Administrator of the Estate of John W. Barnes, Deceased	434.54
77-35	La Paz Pharmacy	1,253.31
77-36	Russell P. Litton III	23.00
77-37	Maureen T. Fitton	11.46
77-42	Richard E. and Edna Kennedy	164.00
77-43	Bank of America NT and SA	286.58
77-46	William R. and Paula K. Bucklew	41.00
77-47	Thomas Robertson	69.24
77-72	Chad M. Bertelson, ASCW	150.00
77-78	Dale F. and J. Muriel Chambers	29.00
77-88	Willie Smith	323.76
77-90	First National Bank and Trust Company	99.83
77-91	Walter P. Kownacki	317.76
77-92	Robert D. Keagy, M.D.	250.00
77-97	Mary Jo Mullen	15.16
77-110	Dorothy Van Gorp , Executrix of the Estate of Dick Van Gorp , Deceased	391.03
77-111	United Savings	25.00
77-127	John and Janet Walsh	24.78
77-129	Ann Zinta	89.18

77-143	Roxanne Devine	70.17
77-163	Simcha Brudno	171.73
77-164	Anzurio and Theresa Mayorga	27.00
77-171	Roy J. Schmidt	72.56
77-172	Patricia Michelson	152.20
77-179	Thomas and Lola M. Baker	229.12
77-180	Eynon and Jean A. Dunn	39.25
77-182	Richard L. and Marion L. Rayner	115.00
77-183	Samuel L. Mainer	50.00
77-184	Juan Davalos	310.46
77-195	Phillip R. Troy	44.21
77-197	Leo G. Rodak	24.72
77-198	C. Larkin Flanagan	159.19
77-199	Ronald A. Willetts	97.15
77-202	Mimi J. Watkins	25.00
77-203	Keith Beverlin	30.97
77-214	Denburn Radiology Association	80.00
77-228	Ralph E. and Ima J. Barker	17.90
77-231	Rosario and Benedetta Digati	47.00
77-236	Gertrude E. Carlson	96.11
77-246	Carroll County 4-H Federation	157.00
77-248	Pargas of Batavia, Inc.	72.64
77-253	Joseph Stadnik	45.33
77-261	Al Arentsen	76.82
77-265	Prudence O. Twitchell	468.86
77-267	Barbara A. Koca, Treasurer, Town of Cortland	1,411.60
77-284	Pamela S. Schopper	21.86
77-306	Charles A. and Cheryl D. Levi	49.18
77-307	Audrey F. Dempsey	235.16
77-308	White-Haines Optical Company	588.44
77-330	Paul J. Madigan	34.87
77-331	John A. Welsch, M.D.	616.00
77-343	Herbert Saywitz and Michael Saywitz	595.52
77-345	Robert Hartman	225.00
77-357	Daniel F. Ray	17.04
77-370	Robert E. and Patricia Ann Nueman	137.94
77-374	Filmfair Communications	20.00
77-392	Ray Schwanwalder	260.00
77-395	Des Plaines Holly Stores, Inc.	398.25
77-403	R. P. Meloan	15.08
77-407	John Ralston Schafer	134.15

77-420	Robert E. and Joy W. Jones	6.17
77-433	Creative Credit Service, Inc.	914.87
77-435	Little, Brown and Company, Inc.	14.66
77-447	Forber Brothers	167.92
77-452	Robert J. Bruce	110.91
77-478	Goldie James	214.65
77-479	Prudence O. Twitchell	472.58
77-480	J. A. and Linda Loring	77.41
77-496	Mercy Hospital	816.06
77-497	Clifford E. Orr	304.92
77-499	James and Beverly McMahon	43.48
77-513	Mercer County Agricultural Society	480.16
77-516	Parvis Khadjavi-Nouri, M.D.	50.00
77-518	John W. Quick	189.00
77-548	Rodney Lee Gipson	80.95
77-584	Frederick and Judith Chusid	667.00
77-595	Violet R. House	32.24
77-605	James E. Donlan, D.D.S.	140.00
77-607	Gary D. and Karen M. Sumner	72.00

STATE EMPLOYEES BACK SALARY CASES

Where, as a result of a lapsed appropriation, miscalculation of overtime or vacation pay, service increase, or reinstatement following resignation, and so on, a State employee becomes entitled to back pay, the Court will enter an award for the amount due, and order the Comptroller to pay the sum, less amounts withheld properly for taxes and other necessary contributions, to the Claimant.

75-253	Max Wood	\$1,185.61
75-1139	Voris Smith	48,436.30
75-1164	Phillip M. Rubins	749.70
75-1291	Mary Lee McReynolds	15,331.30
75-1524	Herman Gus Schroeder	201.98
76-2	Helen G. Headrick	109.48

76-72	Murphy Wair	1,426.69
76-119	Anka Kostic, M.D.	9,051.03
76-146	Roseann Lisk	387.56
76-493	Marguerite Kuehn	65.79
76-509	Helen Dzendzel	28.06
76-514	Virginia M. Corrigan	362.05
76-519	Moe Rattner	16.34
76-595	Leola Hoy	632.93
76-605	Leila P. Adkins	38.14
76-614	Kenneth M. Attaway	461.64
76-660	John Foulks	1,685.06
76-698	Mary L. Carter	47.88
76-726	Sherron A. Ackley	468.08
76-728	Angela Ramas	256.96
76-762	Nell G. Mulkin	201.50
76-794	Patrick A. Ambler, Et Al.	106.64
76-798	County of Knox	2,041.66
76-810	Carolyn F. Welch	1,935.44
76-839	Delmar McCormick	620.70
76-850	Jon R. Flynn	518.60
76-860	Kenneth Donald Elbersen	274.52
76-866	Barbara A. Bartel	286.64
76-973	Walter Harper	422.07
76-975	Juanita Chandler	3,141.94
76-976	Troy Lee Johnson	1,985.41
76-1019	Marjorie Bold, Et Al.	1,067.00
76-1065	Myra W. Scanlan	296.34
76-1067	Donna L. Bums	134.97
76-1139	Arletta Klomparens	198.27
76-1213	Rosie L. Taylor	205.99
76-1248	Paul Patterson	175.00
76-1267	Ralph P. Walker	145.73
76-1305	Bertha Johnson	253.56
76-1307	Lena Webb	1,421.06
76-1321	Margaret Head	4,553.51
76-1342	Linda W. Wills	154.90
76-1367	Alvah M. Presley	5,734.49
76-1381	Nathaniel V. Williams	34.80
76-1432	James Flynn	505.56
76-1442	Pearlie Dixon	223.44
76-1451	Bielefeld, Et Al.	1,125.50

76-1455	Donna Scoles	134.70
76-1499	Clifford B. Malloyd	1,804.48
76-1535	David L. Bender	401.45
76-1544	William N. Fee	1,302.17
76-1623	Judy Dixon	460.40
76-1696	Denyce L. Taylor	98.78
76-1731	Naomi Devore	269.40
76-1744	Mary J. Wicker	292.56
76-1793	Thomas J. Dale	698.19
76-1804	Richard C. Pobgee	712.88
76-2101	Donald H. McCann, Administrator of Estate of Elmer A. McCann, Deceased	1,095.47
76-2228	Betty Palmer	261.65
76-2240	John T. Madigan, Jr.	16.62
76-2275	Grace Eby	312.83
76-2276	Mary Ruth McDonald	677.47
76-2277	Virginia Boyer	616.20
76-2278	Marjorie Gerberding	614.46
76-2321	Nancy Wright	160.13
76-2338	Ruth Foltz	335.00
76-2348	Hortensia Williams	177.37
76-2355	Benjamin F. Steidl	2,678.42
76-2356	Clark Cary	3,112.50
76-2412	Ethel Shakleton	1,944.96
76-2439	Floyd Evans	287.01
76-2507	Chloe E. Hicks	31.40
76-2560	Roberta M. Mayer	1,764.13
76-2562	Roger L. Thomas	143.50
76-2602	Carl Manuso	655.80
76-2676	Ruby Strange	272.09
76-2702	Hakim A. Jaradat	254.26
76-2732	Josie Martin	287.01
76-2738	Randall Craig	392.25
76-2783	Ellis Martin	775.03
76-2833	Leroy E. Carter	15.22
76-2835	Rosemary Helm	106.70
76-2842	Mary Bomher	240.08
76-2844	Ella Harter	536.17
76-3009	Donald Thierry	348.23
76-3038	Inez P. Wiggers	1,265.73
76-3054	Helen Maxwell	323.22

76-3117	Rheiann Marlow	101.97
76-3120	Estelle E. Dermody	269.17
76-3158	Foster I. Siebert	328.64
76-3159	Cecil A. Neal	4,581.89
76-3208	Lois Leesman	283.78

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT OPINIONS

Where the Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

0001	Thelma May Haefner	Not Compensable
0003	Henrietta Grossman	Not Compensable
0004	Marlene Bohac	10,000.00
00011	Anna Zink	10,000.00
00015	Natalie Lesaganich	10,000.00
00017	Johnnie Louise Scriba	Not compensable
00018	Theresa Ann Johnson	Not compensable
00019	Maye Ballerini	10,000.00
00022	Helen Poorman	Not compensable
00025	Elizabeth Corbly	Not compensable
00027	Patricia A. Mackey	10,000.00
00030	Geneva Elliott	10,000.00
00043	Reba Harp	10,000.00
00047	Juanita Grace Thomas	Not compensable
00053	Jeanette Hagopian	Not compensable
00054	Elizabeth Jane Olson	10,000.00
00056	Elberta Collier	10,000.00
00057	Helen M. McGlynn	Not compensable
00072	Patricia A. Arends	10,000.00
00074	Lillie Edwards	10,000.00
00078	Irene Law	20,000.00
00083	Sophie Friend	20,000.00
00100	Herta Smith	Not compensable
00104	Debbie Bennett	20,000.00
00107	Betty J. McIntyre	20,000.00

00108	Mary R. Murphy	20,000.00
00112	Teresa M. Vargo	5,000.00
00113	Mary Bell Jackson	Not compensable
00114	Carol J. Maltby	20,000.00
00115	Shirley Barnes	20,000.00
00116	Betty Ann Anderson	20,000.00
00117	Joanna Crowley	20,000.00
00119	Carol Loftus	20,000.00
00120	Mildred Weakley	20,000.00
00121	Janice M. Watroba	20,000.00
00122	Donald Kinnard and Adele Kinnard	10,000.00

CRIME VICTIMS COMPENSATION ACT OPINIONS

Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of \$200.00 or more; notified and cooperated fully with law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victim's wrongful act or substantial provocation of the victim; and his claim was filed in the Court of Claims within two years of the date of injury, compensation is payable under the Act.

74-12	Hamit Jusufi	\$3,813.70
74-42	Ricardo E. Perry	48.62
74-43	Corrine Davis	Not Compensable
74-55	William A. Taylor	Not Compensable
74-68	Nathan Bradley	Not Compensable
74-76	Robert J. Ward	487.35
74-88	Paul B. Mitchell	264.00
74-89	Charles William Yarber	2,278.71
74-91	Dagmar T. Peterson	851.67
75-3	Robert L. Grays	Not Compensable
75-5	Michael Cibula	2,745.20

75-24	Frank Clark	204.60
75-26	Emily J. Santiago	Not Compensable
75-32	Luedella Atkins	Not Compensable
75-43	Frederick J. Zieman, Jr.	Not Compensable
75-52	Charles A. Shepherd	Not Compensable
75-79	Zerda M. Payne	Not Compensable
75-99	Ernesto Avala	Not Compensable
75-111	John Lampkin	980.84
75-119	Thomas Mucha	Not Compensable
75-125	Samuel F. Painter	Not Compensable
75-130	Howard M. Donaldson	Not Compensable
75-131	Candido Conception	Not Compensable
75-132	Robert Thomas, Sr.	792.71
75-139	Jack Southern	942.50
75-145	Mae C. Pearson	1,613.33
75-153	Alice Johnson	10,000.00
75-163	Elbert E. Jordan	Not Compensable
75-168	Mary E. Sullivan	2,239.49
75-170	Katrina Holsey	Not Compensable
75-180	Tillie Slove	Not Compensable
75-187	Elnora Walker	10,000.00
75-195	Stanley Pittman	Not Compensable
75-201	Myrtle Coleman	10,000.00
75-202	Kimberly MacAskill	Not Compensable
75-206	Charles Rodriguez	3,463.90
75-208	Roseanne Murphy	Not Compensable
75-209	Salvadore Ramirez	Not Compensable
75-221	Phillard G. Balsley	2,890.85
75-227	Frankie B. Maury	Not Compensable
75-229	John A. Kowalski	752.35
75-232	Charles A. Ruffner	Not Compensable
75-233	Willie Winston	Not Compensable
75-234	Volker Pfeffel	Not Compensable
75-241	Donald Lightfoot	Not Compensable
75-242	Callie Lindsay	Not Compensable
75-247	Michael L. Percy	Not Compensable
75-249	Daniel H. Wojkowski	Not Compensable
75-257	Mark C. Mikucki	Not Compensable
75-259	Jesus G. Posatas	730.16
75-261	Agnes Zoska	Not Compensable
75-262	Jean M. Mullhalboy	2,000.00
75-263	June J. Jezek	10,000.00

75-265	Judith Ann Estes	Not Compensable
75-267	Tommy R. Jemison	Not Compensable
75-268	George W. Luce	Not Compensable
75-269	Enrique Rivers	Not Compensable
75-272	Richard Bannister	Not Compensable
75-276	Roberta L. Stevens	Not Compensable
75-283	Eluid V. Villargal	Not Compensable
75-295	Orest Belvedere	Not Compensable
75-301	Moses Ally	812.65
75-305	Richard Taylor, Jr.	Not Compensable
75-306	Wanda Wasikowski	Not Compensable
75-307	Versie L. Miller	1,456.14
75-308	Wilbert Moore	Not Compensable
75-313	Roger C. Getty	10,000.00
75-315	Paul S. Carmon	Not Compensable
75-318	Yugoslavia, Consul of, for Ljubica Costello and Nicole A. Costello	Not Compensable
75-320	Glen Fall Epps, Sr.	Not Compensable
75-324	Joseph M. Kuti	Not Compensable
75-325	Sandra Lochirco	Not Compensable
75-326	Matilda Fernandez	1,087.24
75-331	Edward Sizemore	Not Compensable
75-332	Lawrence Williams	Not Compensable
75-335	James Lee Lucious	Not Compensable
76-337	Frances Kosiba	1,905.11
75-338	Manuel Canto	Not Compensable
75-342	David Sheppard	Not Compensable
75-346	Ruth Longstreet Sole	2,030.60
75-348	Charles Ries, Jr.	Not Compensable
75-349	Curry E. Murray	Not Compensable
75-350	Michael J. Holde	Not Compensable
75-351	Albertha Williams	43.43
75-354	Ernest T. Valle	Not Compensable
75-355	Evelyn Jones	2,840.15
75-360	Dorothy S. Jackson	Not Compensable
75-367	Gary B. Chumley	Not Compensable
75-370	Angela Garcia	972.00
75-371	Cornell M. Stovall	Not Compensable
75-372	Melvin M. Acker	Not Compensable
75-373	Octavio Serrano	3,058.00
75-376	Damuta Barycka	967.55

75-383	Alma Smith	2,077.00
75-384	Roger A. Abrams	Not Compensable
75-385	Gene A. Goodwin	Not Compensable
75-394	Susan Peterson, Et Al.	10,000.00
75-397	Barbara Curtwright	Not Compensable
75-399	Robert W. Wilk	Not Compensable
75-401	Ida Lierbman	Not Compensable
75-403	Robert John Kokosz	Not Compensable
75-404	Henry Brackins	1,347.65
75-410	Dale E. Hanners	2,356.65
75-412	Gelasio Gonzalez	1,354.74
75-414	Pearl Carr	1,846.95
75-415	Keith and Victor Birnfeld	Not Compensable
75-417	Western National Bank of Cicero	2,134.21
75-420	John Lee Edwards	Not Compensable
75-421	Gary Lee Baxter	997.20
75-425	Benjamin Cervantes	Not Compensable
75-426	Rose A. Szabelski	61.95
75-429	Victor M. Torres	Not Compensable
75-434	Harold A. Deiters	Not Compensable
75-435	Stella Wallas	Not Compensable
75-438	Climon Patterson	Not Compensable
75-440	Trinidad Morales	Not Compensable
75-441	Ronald Denham	10,000.00
75-446	Vera M. Buehling	486.00
75-448	Monica M. Golden	Not Compensable
75-453	David E. Wilbur	Not Compensable
75-457	Eugene Blackman	Not Compensable
75-463	Martin W. Neises	Not Compensable
75-464	Herman Edward Walker	Not Compensable
75-465	Almond Johnson	Not Compensable
75-470	Lena L. Morgan	10,000.00
75-472	Clara F. Carter	Not Compensable
75-474	Jerry D. Palmer	1,631.29
75-476	Norman Rolling, Jr.	106.28
75-478	J. D. Crow	Not Compensable
74-481	Clarence N. Peters	Not Compensable
75-482	James A. Black	Not Compensable
75-488	Alice O. McDermott	Not Compensable
75-490	Martin M. Barski	2,118.52
75-493	Arthur V. Credit	Not Compensable

75-496	Larry Blake	3,826.50
75-497	Mamie Jacobson	290.05
75-500	Josephine Rotor	1,704.50
75-501	Ralph C. Yeater	863.08
75-504	Simon Harry Alster	Not Compensable
75-506	Terry D. Vonderheide	Not Compensable
75-511	William H. Drescher	Not Compensable
75-517	Freeman Pope	Not Compensable
75-518	Hugh Murphy	1,338.00
75-519	Dorothy Price	Not Compensable
75-523	Abe Schuman	Not Compensable
75-526	Abe Schuman	Not Compensable
75-527	Timoteo Ramirez	Not Compensable
75-536	Timothy Dailey	Not Compensable
75-537	Juan J. Martinez	Not Compensable
75-541	Patti J. Otten	Not Compensable
75-542	Frank Waters	Not Compensable
75-543	Mrs. Leslie R. Martin	Not Compensable
75-544	Howard Pieper	1,017.45
75-547	Richard T. Buss	Not Compensable
75-548	Thomas Saunders, Sr.	1,800.00
75-550	Jacob R. Armstead	Not Compensable
75-551	Doris Jean Warmack	Not Compensable
75-552	Yvonne Visinaiz	Not Compensable
75-555	Charles Spruill	6,748.30
75-557	Bernard Scales	161.68
75-559	Marc McIntosh	Not Compensable
75-561	Velma S. Swinke	10,000.00
75-564	Willie Ford	514.86
75-569	Helen R. Lehman	347.85
75-570	Gregoria Zayas	Not Compensable
75-571	Reginald Anderson	Not Compensable
75-573	Richard Campbell Kaehny	Not Compensable
75-574	Warren Johnson	Not Compensable
75-575	Arletha Carpenter	Not Compensable
75-577	Ann Marshall	Not Compensable
75-579	Robert S. White	Not Compensable
75-580	Carol P. White	Not Compensable
75-582	Sam Adams	Not Compensable
75-583	Slavko Mihailovic	92.20
75-585	Jeffery S. Boflio	Not Compensable

75-587	Edward Drinane	2,006.70
75-589	William A. Oeser, Jr.	Not Compensable
75-591	Henry C. Ramsey	Not Compensable
75-593	Jennifer Hereth	Not Compensable
75-595	Katherine McDaniel	645.00
75-596	Harold E. Wiig	Not Compensable
75-597	Michael A. Carter	3,927.60
75-602	Leon J. Raptis	Not Compensable
75-603	James Mack Melvin	Not Compensable
75-609	David Alvarez	Not Compensable
75-610	Michael J. Demko, Jr.	Not Compensable
75-611	Roy M. Getschaw	Not Compensable
75-612	Audrey Jeannette Mancini	Not Compensable
75-613	Rosemary J. Walsh	831.00
75-614	Isaac B. Kidd	1,071.36
75-615	Susie Lawrence	2,162.02
75-618	Josephine Gottschalk	Not Compensable
75-620	Josefina Hernandez	Not Compensable
75-625	Robert L. Beane	Not Compensable
75-626	Sadie Brooks	Not Compensable
75-628	Mattie L. Thomas	Not Compensable
75-634	Sharon H. Poggenpohl	1,257.60
75-638	Leonard Myszka	167.00
75-645	Patricia A. Massey	10,000.00
75-649	Ann Strong	695.00
75-650	Gwendolyn Durand	800.00
75-651	Gloria C. Del Carpio	691.11
75-652	Lola O. Johnson	Not Compensable
75-656	Edgar Lee Waller	Not Compensable
75-657	Benigna Sato	257.00
75-658	Abdallah Hussien	10,000.00
75-659	Solomon Dawson	Not Compensable
75-661	Charles G. Rogers	1,650.44
75-662	Richard Harris	Not Compensable
75-664	Vincent J. Leone	Not Compensable
75-665	Willie Watson	Not Compensable
75-667	Cynthia Ravenscraft	10,000.00
75-669	Paul Moy	10,000.00
75-670	Rodger Finkley	Not Compensable
75-671	Johnny McBride	634.33
75-674	Jeannelle Hartfield	1,584.95

75-677	Zera M. Hatcher	Not Compensable
75-679	William A. Johnson	Not Compensable
75-680	Catherine S. Spataro	116.21
75-681	Larry Webb	Not Compensable
75-682	Margaret Kallum	880.35
75-683	Felix Opalka	4,214.23
75-687	Theresa Weiss	1,276.60
75-690	Russell W. Stevens	Not Compensable
75-692	Fred D. Dennis	Not Compensable
75-693	Larry R. Dennis	Not Compensable
75-697	Evelyn Ziperstein	Not Compensable
75-699	Isiah Giles	647.78
75-700	Mary D. Cunningham	224.00
75-701	Michael Hollins	Not Compensable
75-702	Dominic Mielnicki	Not Compensable
75-703	Richard McDabid	10,000.00
75-705	Mary Prewitt	607.00
75-708	Pauline E. Harrison	19.40
75-711	Matthew Jordan	Not Compensable
75-712	Raymond Seals	Not Compensable
75-715	Gerald M. Mason	561.26
75-717	Mrs. C. L. Swanson	1,448.25
75-720	James Love	1,475.00
75-721	James W. Love	1,195.00
75-723	Lonnie Edward Myles	Not Compensable
75-725	Archie Otis	Not Compensable
75-727	Harry Bia	20.46
75-729	Rita Connelly	634.50
75-730	Theresa E. Sullivan	Not Compensable
75-733	Richard G. Halton	Not Compensable
75-734	Dorothy (Wilcox)Hinton	Not Compensable
75-736	Edward M. Swanson	1,448.25
75-741	Benita S. Schecter	878.40
75-744	Donald N. Myron	Not Compensable
75-746	John Henry Winters	3,800.00
75-749	John Krysiak	830.12
75-752	Edna Richeson	572.00
75-754	Thomas Lloyd Hammond	755.30
75-756	Barbara Tarry	Not Compensable
75-757	Cora Badon	Not Compensable
75-758	Judy Ann Severs	996.36

75-759	Anthony Marcimino	1,579.65
75-762	Manuel Agosto	Not Compensable
75-763	Johnnie Ray White	Not Compensable
75-768	John F. Kosirog	Not Compensable
75-769	Opal Laverne Ealy	Not Compensable
75-770	Dorthea and Darrell McWilliams	Not Compensable
75-777	Katherine Horace	Not Compensable
75-778	Katherine Horace	Not Compensable
75-779	Katherine Horace	Not compensable
75-780	Katherine Horace	Not Compensable
75-781	Johnny Dunn	1,348.21
75-782	Van E. Kurshus	Not Compensable
75-785	Janet H. Osleber	2,013.11
75-787	Theophilus Sanders	Not Compensable
75-788	Jerome Edmonds	Not Compensable
75-790	Peter A. New McRoland	Not Compensable
75-791	Irma Cortagena	Not Compensable
75-793	Charles and Lillian Morrison	Not Compensable
75-794	Helen Klein	966.13
75-795	Virginia Shaw	2,111.95
75-796	Lena Huffman	605.01
75-797	Jack P. Vitale	Not Compensable
75-798	David A. Martin	Not Compenseble
75-799	Alice Taylor Clark	Not Compensable
75-802	Rita Ventrello	Not Compensable
75-805	Cleatoria Smith	Not Compensable
75-806	Mark Hunter	Not Compensable
75-807	Jesse Huston	Not Compensable
75-811	Grace M. Bivens	Not Compensable
75-813	Eunice Belton	1,413.35
75-814	Erma Carter Boyd	1,828.75
75-816	Lambert L. Drenthe	Not Compensable
75-819	Anne M. Slack	3,718.56
75-822	Ramon Vasquez	3,734.95
75-824	Michael Donald Reed	Not Compensable
75-825	Dulin Doss	Not Compensable
75-827	William J. Pigott	Not Compensable
75-828	Ford Stilson	2,039.40
75-830	Don Carlton Ponder	1,775.59
75-831	William V. Palmer	1,930.00
75-832	Gary O. Daugherty	Not Compensable

75-836	Frank R. Reznar	86.08
75-837	Katie Folak	10,000.00
75-838	Lillie Young	1,756.72
75-839	Celeste Bak	1,605.00
75-840	Marion Stepter	Not Compensable
75-841	Ronald Henderson	Not Compensable
75-843	Bonnie Sue Hinds	Not Compensable
75-844	Grace Bauer	2,982.47
75-845	Juanita Edwards	3,373.10
75-846	Myrtle Peters	Not Compensable
75-852	Lillian Yadgir	Not Compensable
75-853	Elena Demarco	1,802.00
75-855	Arthur C. Peterson	Not Compensable
75-856	J. B. Riddle	Not Compensable
75-857	Margarita M. Hathaway	754.50
75-858	Margaret L. Morrissey	Not Compensable
75-859	Wylie Simmons	Not compensable
75-861	Shirley E. Clowers	Not Compensable
75-864	Thomas M. Ortega	Not Compensable
75-865	Julio P. Sanchez	Not Compensable
75-866	Julio Sanchez	1,955.00
75-869	Imogene I. Campbell	Not Compensable
75-870	Joseph P. Butler	Not Compensable
75-871	Mettres C. Franklin	Not Compensable
75-872	Dorothy Coleman	959.00
75-875	Patricia George	1,782.00
75-878	Matilde Montanez	5,432.10
75-879	Morris L. Briton	2,861.73
75-880	Richard Mancini	320.56
75-881	Thaddeus Wrona,	4,172.16
75-882	Douglas E. Helms	Not Compensable
75-884	Valerie Proffitt	Not Compensable
75-886	Rodney Turner	780.00
75-887	Lawrence Lacour	Not Compensable
75-889	Henry Krautter	Not Compensable
75-892	Ethel L. Epting	Not Compensable
75-893	Isaac Vega	Not Compensable
75-895	Christin Franklin	Not Compensable
75-896	Emma J. Martin	Not Compensable
75-897	Dorothy E. Lindquist and Jennie Gibbons	Not Compensable
75-898	Lurene Grayson	Not Compensable
75-900	Warren Hatcher	1,300.00

75-902	Paul Paciorek	Not Compensable
75-906	Raul Ismael Guerra	903.40
75-907	Anthony Calloway	Not Compensable
75-908	Louis Blackwell	6,143.69
75-910	Gerald J. Gielow	2,009.64
75-911	Carrie Badgley	2,269.37
75-913	Emma Alvarez	4,496.35
75-917	Judith Stein	Not Compensable
75-919	Vivian Giuliana	1,800.00
75-921	Robert L. Walker	Not Compensable
75-925	Charles W. Krassel	Not Compensable
75-926	Benny Lee Oliver	Not Compensable
75-927	Mary Jamison	Not Compensable
75-933	Frank A. Sedivy	2,000.00
75-935	Charles E. Thompson	Not Compensable
75-937	Angeline Zielinski	10,000.00
75-939	Ruth Elsay	Not Compensable
75-940	George Reynolds	Not Compensable
75-942	Amelia Currie	Not Compensable
75-943	David Matthews	Not Compensable
75-946	Jacqueline Waddell	92.00
75-952	Mary Fogarty	92.53
75-954	Norine Messina	290.72
75-956	Margaret K. Orvis	Not Compensable
75-957	Luis Mercado Arce	Not Compensable
75-958	James Nicol	224.06
75-959	Kurt Weiser	Not Compensable
75-961	Vivian Culver	Not Compensable
75-962	James Lee Ravenscrott	Not Compensable
75-964	William McKnuckles	Not Compensable
75-967	Rose Ostrowski	585.00
75-968	Rose Ostrowski	1,800.00
75-970	Mae Lelia Mitchell	900.00
76-1	Rena S. Gruenberg	Not Compensable
76-3	Joshua Ojo Oni	1,085.20
76-12	Rita Varchetta	124.60
76-13	Reverend Grady Tuggle	706.30
76-14	Eric C. Rowe	1,845.53
76-18	Edna Robbins	19.00
76-19	William McNamara	175.00
76-20	Thelma Steele	Not Compensable
76-21	Jerry Merenivitch	Not Compensable

76-24	Stephanie Wojcik	2,533.73
76-25	David Garlousky	Not Compensable
76-27	Thomas M. Sullivan	Not Compensable
76-34	Gary G. Forde	Not Compensable
76-38	Paul R. Orcholski	Not Compensable
76-40	Lelia Edgerton	1,327.32
76-41	Ryscord Wysocki	Not Compensable
76-42	Joseph W. Mastalan	Not Compensable
76-43	Walter Boyd	92.46
76-44	Mary C. Danheiser	Not Compensable
76-46	Eston G. Hodges	3,124.40
76-47	Valerie Suter	2,198.34
76-52	William A. Weiler	1,053.44
76-57	Frank Barajas	Not Compensable
76-63	Marie Costanza	10,000.00
76-68	Ida Gerber	Not Compensable
76-76	Jean Miller	Not Compensable
76-77	Clato Ormond	Not Compensable
76-82	Roy Costiner	Not Compensable
76-85	Chris A. Pepol	Not Compensable
76-86	Ernestine C. Garner	Not Compensable
76-88	Jose I. Gonzales	147.70
76-89	Lorraine Kelly	Not Compensable
76-90	Linda De La Fuente	Not Compensable
76-92	Amado Pagan	330.38
76-97	Simon Pera	Not Compensable
76-100	Maria Cardona	10,000.00
76-101	Lois Moore	1,042.00
76-104	Lawrence H. Glazer	Not Compensable
76-105	Ralph Daniel	Not Compensable
76-106	Herbie K. Tolbert, Sr.	1,380.30
76-107	Christ L. Karambelas	20.00
76-108	Leo M. Carter	Not Compensable
76-109	Ernest Blackwell	732.04
76-110	Leroy Holley	Not Compensable
76-111	Iwan Maksymezuk	Not Compensable
76-120	Annie B. McGee	Not Compensable
76-121	Janet H. Oslebar	1,213.85
76-122	Pam Foster	10,000.00
76-123	Lauretta Scanlon	142.20
76-124	John Daniels	4,097.40
76-127	Joyce Spurlin	Not Compensable,

76-128	Scott Leon	Not Compensable
76-129	Robert G. McNamara	Not Compensable
76-130	Albert F. Suma, Sr.	10,000.00
76-133	Mark Jennings	479.05
76-135	Rosie Lee Toney	1,612.25
76-136	Leo Butcher	156.25
76-139	Carolyn Brown	Not Compensable
76-141	Roger Hicks	124.55
76-142	Mealous J. Hutchinson	Not Compensable
76-144	Kenneth Banfi	814.70
76-150	Joseph R. Weafe	880.67
76-153	David A. Welch	322.74
76-154	Kenzie Britton	Not Compensable
76-156	Roosevelt Williams	1,902.18
76-157	Ellen E. Johnson	948.51
76-158	Lester Junior Blain	Not Compensable
76-160	Frank Strlek	Not Compensable
76-161	Irene Fields	10,000.00
76-163	Alvia B. Baker	323.90
76-165	Dorothy Carter	730.00
76-166	Dennis White	1,306.00
76-168	James P. Gogarty	Not compensable
76-170	Ronald G. Shandick	Not Compensable
76-177	Shirley Martin	1,194.50
76-178	John Butterly	2,800.00
76-180	Doris A. Round	236.67
76-181	Thomas M. Asma	660.32
76-187	Lambert Callanta	Not Compensable
76-188	Ronald Betheny	Not Compensable
76-194	Elaine A. Nelson	2,346.70
76-195	Alvin Anderson, Jr.	Not Compensable
76-196	Vennie C. Ballard	876.81
76-205	James E. Corrigan	7,900.79
76-209	Mabel A. Reid	5,158.65
76-210	Kenneth Yocus	Not Compensable
76-215	Alexander Tiahnybok	Not Compensable
76-218	Pam Foster	Not Compensable
76-220	Mary Lewis	10,000.00
76-223	Fermin C. Ocampo	649.84
76-224	Ann DiDomenico	Not Compensable
76-227	Mary Elizabeth Bogle	5,415.22
76-232	Melva W. Robinson	Not Compensable

76-234	Stuart Holsapple	369.44
76-235	Vincent Gutierrez	1,800.00
76-236	Ellsworth Mayer	1,550.00
76-244	Robert Harris	Not Compensable
76-247	June C. Risley	10,000.00
76-248	Louis N. Flores	2,240.32
76-249	Helen Marsick	859.26
76-252	Joseph Peart	1,110.00
76-253	Pat Cardi	1,800.00
76-256	Willie B. Jones	1,581.00
76-257	Jessie Liddell	Not Compensable
76-259	George Panagakis	Not Compensable
76-260	Audrey I. Bonner	1,278.75
76-261	Delbert R. Mills	Not Compensable
76-263	Dwayne Powell	427.75
76-267	Eloise Wiggins	1,116.50
76-271	John James Quilty	Not Compensable
76-272	Dominic Cresto	2,000.00
76-274	Willie Johnson	725.00
76-281	Eddie Jackson	Not Compensable
76-282	Catherine Henahan	Not Compensable
76-283	Stanley L. Felty	Not Compensable
76-285	Jerry Guilmette	Not Compensable
76-286	Rosa M. Badillo	Not Compensable
76-288	Michael Craig Beacham	971.80
76-289	Beth J. Boley	Not Compensable
76-290	Anthony Ripoli	Not Compensable
76-291	Suzanne Rouda	382.85
76-292	Gladys Williams	Not Compensable
76-293	Kathleen Gilfillan	2,630.00
76-295	Donald DeSousa	Not Compensable
76-296	John R. Buechner	369.44
76-297	Kazimierz Cichocki	601.76
76-298	Jerry Durbin	Not Compensable
76-311	Brian Block	4,636.25
76-312	Willard C. Godwin, Jr.	1,335.00
76-315	Ardina Karpan	1,212.00
76-318	Ernestine Harris	Not Compensable
76-322	Nellie Lee	Not Compensable
76-324	Kathryn Dampier	1,485.00
76-329	David Cox	Not Compensable

76-332	John E. Frank	416.19
76-333	John Murray	373.70
76-335	Gloria Ryles	Not Compensable
76-336	Ruth E. Christianson	906.60
76-337	Florence Ritchie	Not Compensable
76-338	Ola Mae Wright	1,236.25
76-348	Melvin Jones	Not Compensable
76-351	James Locke	Not Compensable
76-352	Mary Chambers	418.10
76-353	John L. Birdsong	6,764.00
76-356	James S. Downey	170.00
76-365	Richard OConnell	Not Compensable
76-372	Isabel Flynn	1,145.65
76-376	Rose M. Burger	1,297.25
76-378	Madge Martino	Not Compensable
76-380	Margaret Brown	10,000.00
76-383	Donald Pollard	Not Compensable
76-390	Francis W. Connelly	Not Compensable
76-394	Josephine Dyrek	196.10
76-398	Joann L. James	438.70
76-400	Emily Bagdonas	Not Compensable
76-402	Theodora Gibbs	566.80
76-402	Theodore Gibbs	1,023.36
76-404	Auroria Gomez	Not Compensable
76-405	Gail Avery	Not Compensable
76-406	Leo Watson	Not Compensable
76-415	Margaret S. Moss	1,293.00
76-417	Bernice Morrissey	10,000.00
76-421	Herman Neal	Not Compensable
76-422	Thomas Clark	Not Compensable
76-423	Vicente Nunez	Not Compensable
76-424	Margaret Spencer	Not Compensable
76-426	Karen Kelly	10,000.00
76-428	Irma Cartagana	Not Compensable
76-431	Rosalyn Weissman	40.46
76-432	Shirley Hagele	Not Compensable
76-433	Paul R. Orcholski	Not Compensable
76-434	Daisy Clements	Not Compensable
76-436	Douglas Kittel	Not Compensable
76-437	William Henderson	Not Compensable
76-438	Virginia Bundy	646.26

76-439	Babbette Bundy	Not Compensable
76-440	Lawrence Brown	1,368.03
76-442	George P. Boggan	Not Compensable
76-445	John F. Butler	162.00
76-447	Elizabeth Garcia Realmo	1,118.67
76-448	Janice Pasko	10,000.00
76-451	Clarence Brunegraff	Not Compensable
76-455	Wilma B. Wrigely	1,063.66
76-457	Beverly Douglas	Not Compensable
76-459	Jose A. Perez	Not Compensable
76-460	Reno Panozzo	Not Compensable
76-463	Pearl Monegain	294.10
76-466	Louis A. Bunna	Not Compensable
76-467	Timothy J. Murphy	Not Compensable
76-469	Eleanor Kiel	1,372.00
76-474	Harold C. Meyer, Jr.	Not Compensable
76-478	Ronald L. Schipiour	Not Compensable
76-481	Edward Tate	1,062.60
76-483	Geraldine Brown	Not Compensable
76-485	Dock Booth	740.50
76-486	Lorraine Gori	851.66
76-493	Patricia Jenkins	Not Compensable
76-494	Margie M. Naeve	5,448.41
76-498	James E. Ferguson	376.71
76-500	Ronald Ray Dimzoff	1,994.75
76-504	Ernest and Edna Peterson	Not Compensable
76-505	Larry Sheppard	1,677.40
76-507	Flossie J. Massie	Not Compensable
76-509	Hector N. Encarnacion	Not Compensable
76-514	Milton Blackwell	90.00
76-517	Martha Upton	784.75
76-518	Henry Tooley	264.50
76-522	Joyce Riley	Not Compensable
76-523	George McClement	Not Compensable
76-525	Alfred Kaplan	Not Compensable
76-527	Harold Gresham	1,892.74
76-530	Beverly Waddell	3,708.80
76-532	Delphine Gzemery	Not Compensable
76-534	Sophia Cox	Not Compensable
76-542	Richard F. Patton	720.00
76-544	First Trust and Savings Bank of Watseka, Conservator of the Estate of Alda Arseneau	Not Compensable

76-554	Harvey Washington	1,071.04
76-556	John R. Sigle	1,907.20
76-563	Lela Charles	Not Compensable
76-565	John P. Mathinsen	Not Compensable
76-566	Minnie L. Jones	897.00
76-567	Anthony Joseph Parenti	Not Compensable
76-576	Carol Meyer	10,000.00
76-583	George Ulrich	Not Compensable
76-589	Nicholas Roy Latino	Not Compensable
76-591	Clifton Lloyd	Not Compensable
76-595	Captola L. Johnson	Not Compensable
76-596	Wilbur Harvey	Not Compensable
76-598	Russell Dixon, Sr.	614.80
76-599	Patricia McGinnis	Not Compensable
76-603	Edith Mendrick	Not Compensable
76-604	Bessie Riley	Not Compensable
76-605	Ismeal Rodriguez	Not Compensable
76-606	Lawrence Williams	Not Compensable
76-607	Evelyn I. Superfine	454.05
76-609	Edward J. Cecke	Not Compensable
76-611	Annabelle Lowe	1,718.55
76-613	Robert M. Seguin	Not Compensable
76-615	Freeman Ellis	Not Compensable
76-620	Wilhelma Plunkett	1,800.00
76-622	Oscar J. C. Stewart III	Not Compensable
76-623	Irene Quernheim	201.90
76-626	Susan N. OBrien	1,213.45
76-627	Doris McGee	Not Compensable
76-628	Melvin Brooks	2,293.75
76-629	John Cisarik	Not Compensable
76-630	Jerome A. Gross	Not Compensable
76-636	Norman Karrer	1,800.00
76-641	Gary Siers	Not Compensable
76-648	Fred Calam	Not Compensable
76-662	Martino Santarrelli	3,656.15
76-663	Ronald Wynn March	10,000.00
76-667	Earline Sutton	Not Compensable
76-669	Henry L. Murphy	Not Compensable
76-673	Stella Faitek	624.87
76-676	Harvey Hamon	Not Compensable
76-678	Janet Ann Jenkins	Not Compensable

76-679	William Cooley	1,939.00
76-683	Caryn E. Walusiak	Not Compensable
76-693	Julius O. Aina	Not Compensable
76-700	Ignatius Gabor Jahas	Not Compensable
76-701	Maymon R. Scott	3,243.17
76-702	Kathleen L. OConnell	Not Compensable
76-703	Betty A. Lupont	Not Compensable
76-704	Girtha Armstrong	Not Compensable
76-708	Charles George Nightingale	Not Compensable
76-709	Randolph Andrews	Not Compensable
76-712	Gerald Smith	Not Compensable
76-713	Roger Pope	193.00
76-716	Ruth A. Ebling	127.05
76-717	Ralph E. Buckley	Not Compensable
76-719	Mondell A. Stewart	Not Compensable
76-721	Mondell Stewart	Not Compensable
76-724	Nickolas John Guerra	Not Compensable
76-726	Edward Broadnax	1,800.00
76-727	Jesus Bermudez	1,800.00
76-728	Myles Van Cura	2,447.00
76-732	Mary B. Pendergast	Not Compensable
76-733	Mahlon Taylor Hewitt	Not Compensable
76-736	Charles Howell, Sr.	1,670.99
76-738	Steven Russel	Not Compensable
76-739	Luther Hendricks	Not Compensable
76-740	William J. Cullen	Not Compensable
76-741	Estell Collins	Not Compensable
76-743	Theaster Gates	Not Compensable
76-744	Frank White	Not Compensable
76-747	Frances Ortiz	1,273.00
76-749	Kay Leeds	Not Compensable
76-750	Felicitas A. Tabor	70.00
76-751	Gertrude M. Fitzpatrick	Not Compensable
76-752	Robert Lagrone	Not Compensable
76-753	Gitlia M. Serota	157.07
76-755	O'Neil Bertrand	Not Compensable
76-759	Lucille Brown	1,230.00
76-760	Francis A. Brice	Not Compensable
76-768	Helen Schaefer	Not Compensable
76-770	Oliver Everetts	Not Compensable
76-772	Victor Warren	Not Compensable

76-773	Shannon Dione Lindsey	Not Compensable
76-775	Mack Hopkins, Sr.	1,100.00
76-782	Judson Hall, Sr.	Not Compensable
76-783	Charles E. McLemore, Jr.	Not Compensable
76-789	Viola Williams	Not compensable
76-795	Michael Grenke	Not Compensable
76-798	Elmer Claiborne	Not Compensable
76-800	Joseph McGowan	795.00
76-804	Kenneth L. Romig	1,204.00
76-809	Andrew Williams	735.50
76-812	Irwin Willis	1,632.25
76-815	William R. Hutton	Not Compensable
76-819	Barbara Burch	290.00
76-820	Otto Emil Kantke	Not Compensable
76-823	Corrine Stravopoulos	2,000.00
76-825	Elizabeth Karen Warner	Not Compensable
76-828	Christine Hallett	10,000.00
76-829	Florence M. Dace	Not Compensable
76-833	Bryon L. Sheets	Not Compensable
76-838	Lillian Levine	Not Compensable
76-841	Henry Frantz	Not Compensable
76-842	George Bouzeanes	Not Compensable
76-843	Larry M. Farmer	Not Compensable
76-845	John E. Keeley	Not Compensable
76-848	Ella M. Pettis	1,800.00
76-849	Vernon Wade Bryson	8,869.50
76-850	Donald Ciesla	Not Compensable
76-851	Ruby Lee Shellie	670.00
76-853	Anthony B. Clark	Not Compensable
76-854	Louise Eckford	Not Compensable
76-856	Jose R. Barreda	Not Compensable
76-859	Raymon Barbose	1,965.25
76-860	Judith Meeks	Not Compensable
76-866	Emelinda Marrero	Not Compensable
76-868	Anne Simon	Not Compensable
76-869	Geraldine Walls	Not Compensable
76-874	Daniel John Sullivan	10,000.00
76-876	Lupe Mendoza	599.00
76-881	Antonio Almaraz	3,161.00
76-883	George Williams	Not Compensable
76-885	Arthur Neilan	Not Compensable

76-890	Laura Poindexter	Not Compensable
76-892	Joseph H. Dozier	3,590.42
76-893	Jerry Ray Anderson	Not Compensable
76-894	Ronald Muno	1,800.00
76-895	Herman Neal	Not Compensable
76-896	Frank Bence, Jr.	1,800.00
76-897	Delia U. Godinez	361.92
76-898	Mary Brown	Not Compensable
76-900	Mildred Scott	1,579.50
76-902	Curt Frederikson	788.52
76-903	Lillie M. Williams	1,490.00
76-908	Charles A. Jobes	35.00
76-910	Santos Gonzales	800.00
76-915	Freddie Nelson Hicks	Not Compensable
76-919	Antonio Rangel	Not Compensable
76-920	Pearl Edwards	1,550.00
76-923	Nick Gurovich	2,477.73
76-926	Maurice Pasquier	Not Compensable
76-932	Carman Cabassa	588.00
76-938	Jack Haskell	Not Compensable
76-939	George Voukidas	Not Compensable
76-940	Phyllis Hickey	Not Compensable
76-941	Beatrice L. Davis	457.00
76-943	Tahira Mughal	2,133.33
76-945	Andrew Watson	Not Compensable
76-947	Norma Johnson	1,800.00
76-949	Richard Schilling	2,207.89
76-954	Fredrick Arrington	Not Compensable
76-956	Rochelle Robinson	Not Compensable
76-957	Mae L. Donner	10,000.00
76-958	Terry Vern Giles	355.43
76-960	Mary Grace Glass	473.77
76-965	Norma J. Roberts	1,148.47
76-969	Emil Gene Neri, Jr.	Not Compensable
76-970	Adelia F. Taylor	Not Compensable
76-971	Michael Mackey	Not Compensable
76-973	Donald A. Tarjan	Not Compensable
76-974	Stanley Hapaniewski	173.80
76-979	Ethel Jordan	Not Compensable
76-980	Juan Maldonado	Not Compensable
76-983	Antonio Rangel	Not Compensable

76-989	Catherine McCue	882.93
76-991	Paul V. Alvarado	9,962.68
76-995	Rochelle Robinson	Not Compensable
76-1001	Margaret Cassidy	2,013.85
76-1002	Deborah K. Hayes	Not Compensable
76-1008	George W. Butt	732.63
76-1009	Johnnie Ethel Lewis	Not Compensable
76-1010	Melvin H. Whitney	1,065.50
76-1011	Mariano Custodio, Sr.	634.00
76-1012	Christopher P. Murdock	2,653.26
76-1018	Ronald R. Kaminski	Not Compensable
76-1019	Delores Brunfield	Not Compensable
76-1020	Will C. Spraggins	Not Compensable
76-1032	Michael P. Verthein	Not Compensable
76-1035	Mark Siska	1,674.30
76-1040	Wanda L. Starnes	10,000.00
76-1041	Theola Iris McKee	10,000.00
76-1043	Ruth E. Livvix	4,014.30
76-1055	Michael J. McEntee	Not Compensable
76-1057	Frank Ciardullo	1,800.00
76-1059	Every Harmon	Not Compensable
76-1062	Charlene Sanders	1,778.00
76-1066	Billy D. Walters	4,244.42
76-1070	Ben R. Brookins, Jr.	Not Compensable
76-1076	Roberta Calvert	10,000.00
76-1077	Stella M. Miller	1,786.91
76-1082	David Dupree	1,785.00
76-1088	Verda Dubose	Not Compensable
76-1097	Edward Biagi	Not Compensable
76-1098	Jonathon Ray Merrill, M.D.	Not Compensable
76-1104	Gladys Matthews	Not Compensable
76-1108	Frank Evans	Not Compensable
76-1112	Laverne Johnson	Not Compensable
76-1113	Gladys Green	Not Compensable
76-1116	Chester Bauer	154.30
76-1128	Frank Lingg	Not Compensable
76-1135	Junior D. Walker	10,000.00
76-1137	Betty J. Rolett	Not Compensable
76-1139	Martha Plaxico	Not Compensable
76-1141	Timothy S. Smith	1,016.90
76-1146	Theotis Keith Carr	Not Compensable

76-1147	Hattie Paige	Not Compensable
76-1153	Pura Caraballo	Not Compensable
76-1154	Victor Warren	Not Compensable
76-1161	Jimmie L. Roberts	Not Compensable
76-1171	Anthony Lee Bailey	10,000.00
76-1180	Bruce Donald	Not Compensable
76-1181	Catherine Collins	1,015.00
76-1185	Theresa Joyce Brown	Not Compensable
76-1186	Goldie Moore	1,393.00
76-1188	Delbert Hardin	Not Compensable
76-1190	John G. Krise	Not Compensable
76-1193	Orlene M. Berkel	185.02
76-1197	Anna M. Smith	Not Compensable
76-1202	Alfredo Alamo	Not Compensable
76-1204	William Pruitt	Not Compensable
76-1205	Samuel Wallace	Not Compensable
76-1206	Lillian J. Santoro	909.00
76-1207	Helen Pope	2,000.00
76-1212	Claude James	588.05
76-1213	Alexis Arroyo	344.60
76-1219	Terry Lee Lutz	Not Compensable
76-1221	Lula Mae Williams	1,800.00
76-1222	Erskin Melchor	1,198.00
76-1228	Nicholas Comito	10,000.00
76-1233	Jane Hyde Stallard	10,000.00
76-1242	Evelyn Aprati	310.23
76-1272	Rodney L. Frazier	1,025.00
76-1280	John Paul A. Boston	Not Compensable
76-1281	Ann Carson	1,364.72
76-1284	Renaldo Freda	10,000.00
76-1285	Earline Sutton	Not Compensable
76-1290	Ira Leon Thompson	Not Compensable
76-1297	Mildred Leviton	Not Compensable
76-1308	Mary Dallaire	Not Compensable
76-1309	Kenneth Simms	Not Compensable
76-1322	Carolyn Hatfield	Not Compensable
76-1326	Theresa Joyce Brown	Not Compensable
76-1329	Frank H. Mace	Not Compensable
76-1340	Theodore Alston	Not Compensable
76-1341	Willie B. Jones	Not Compensable
76-1345	Jerline Gray	Not Compensable

76-1371	Ailin C. Thomas	1,929.02
76-1375	Jessie Boyd	Not Compensable
76-1383	Rebecca Armstrong	Not Compensable
76-1396	Tom Hoover	Not Compensable
76-1401	David E. Anderson	10,000.00
76-1404	Adedayo Adelekan	8,885.05
76-1408	Frank Wierzbicki	Not Compensable
76-1428	Ruth E. Keeley	1,800.00
76-1440	Bernadine Arnold	Not Compensable
76-1565	Nancy M. Hansen	Not Compensable
77-4	David or Sharon Hillebrand	52.23

CRIME VICTIMS COMPENSATION ACT CASES REPORTED IN FULL FOR FY 1976 and 1977

(No. 74-CV-12— Claimant awarded \$3,813.70.)

IN RE APPLICATION OF HAMIT JUSUFI.

Opinion filed September 8, 1976.

MARTIN CASSELL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
PEGGY BASTAS, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Wrongful act or substantial provocation.

SAME—Injury must be proximate result of crime.

SAME—Cooperation with law enforcement officials.

PER CURIAM.

This claim arises out of an alleged crime that took place on November 5, 1973, at 212 S. LaSalle Street, Aurora. The Claimant seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill. Rev.Stat., 1973, Chapter 70, Section 71, et seq.) (hereafter referred to as the "Act").

The issues in this case are whether (1) the assault on the Claimant was provoked by him, (2) the injuries received were the proximate result of the criminal assault, and (3) whether the Claimant cooperated fully with the law enforcement officials in the apprehension and prosecution of the assailant.

The facts were that on the evening of November 5, 1973, the Claimant met two men and two women who were acquaintances of his at a restaurant and was invited to the apartment of one of the men. The entire group went to this person's apartment. After having some coffee and conversation, the Claimant asked to go

home. The group then went to Claimant's automobile and the Claimant was driven home by one of the acquaintances.

On the way to the Claimant's home, the automobile occupied by the parties struck a parked car and received minor property damage. No one was injured.

The Claimant was driven home, arriving about 10 p.m. The two men and two women left and the Claimant went to bed and fell asleep.

About one hour later, the Claimant was awakened from his sleep by repeated knocks on the door. Upon opening the door he saw the people with whom he had spent the early part of the evening. One man had a chain in his hand with which he struck the Claimant on the head. **The** Claimant fell to the floor and was severely beaten into unconsciousness.

The police were called by the owner of the building who heard the noise and the Claimant was taken to a hospital where he stayed overnight.

The Claimant was unable to work for the next three days because of pain in his right side and blood in his urine. On the fourth day, he worked a few hours but after arriving home he collapsed and was taken to the hospital. His condition was diagnosed as a ruptured kidney and an operation was performed removing the kidney.

As to the first issue, that of possible provocation, there was no evidence of such provocation. There were, however, various contradictory statements in police and hospital records. However, this Court is of the opinion that any contradictory statements were the result of the Claimant's obvious difficulty with the English language. Indeed, his court testimony, even with an interpreter, was difficult to follow.

There being no actual evidence of provocation, this

Court finds that the assault on the Claimant was unprovoked.

As to the second issue, that of proximate cause, the evidence was clear. The Claimant's physician testified that it was her opinion that the removal of the kidney was the proximate result of the beating described. There was no evidence that the automobile accident resulted in any injury whatsoever.

As to the third issue, the facts were that the Claimant talked to the police after he recovered his senses in the hospital but did not sign a complaint. He did however sign a complaint **two** days later and appeared at the trial of the criminal complaint and the assailants were thereby convicted of disorderly conduct.

The Court therefore finds that the Claimant cooperated fully with the law enforcement officials.

The Court further finds that the Claimant was a victim of a violent crime as defined in Section 2(c) of the Act, to wit: "Aggravated Battery", (Ill.Rev.Stat., **1975**, Chapter **38**, Section 12-4).

The Court further finds that the Claimant and his assailants were not related nor did they share the same household.

The Claimant incurred medical and hospital expenses in the amount of **\$3,347.70**.

The Claimant worked for the Aurora County Club as a kitchen aid. He earned **\$2.75** per hour for a 48 hour week. He missed one month of work full time and missed three hours per day for two additional weeks.

Section 4 of the Act provides:

Loss of earnings . . . shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on **\$500.00 per month, whichever is less.** . . .

In this case only \$500.00 per month may be considered as lost earnings. By this method the victim lost \$666.00 in earnings.

The total amount of his loss is therefore **\$4,013.70**.

In determining the amount of compensation to which an applicant is entitled, the Court must first deduct \$200.00 as provided in Section 7 of the Act.

After deducting the statutory deduction of \$200.00 the compensation due to the claimant is computed at **\$3,813.70**.

IT IS HEREBY ORDERED that the sum of **\$3,813.70** be awarded to the Claimant, Hamit Jusufi, an innocent victim of a violent crime.

(No. 74-CV-15—Claimant awarded \$577.00.)

IN RE APPLICATION OF WAYNE BASS.

Opinion filed January 19, 1976.

BURTON WEINSTEIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Compensable loss of earnings.* Claimant can recover loss of earning although he was unemployed at time of crime where he had been hired but not actually commenced work at time of crime.

PER CURIAM.

This claim arises out of a criminal offense which occurred on November 23, 1973, at the Five Brothers Liquor Store, 4659 South State Street, Chicago. The Claimant seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill. Rev. Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereinafter referred to as the "Act").

The Court of Claims entered an order on July 15,

1975, dismissing this claim. Pursuant to Section **9** of the Act, the Claimant moved for a hearing and the request was granted.

Evidence was taken at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The sole issue presented to the Court is whether the Claimant established any compensable loss of earnings.

It was stipulated by the parties that the Claimant, while a patron of the Five Brothers Liquor Store, **4659 S. State Street, Chicago**, on midnight, November **24, 1973**, was shot in the right thigh. He was treated for his wounds at Provident Hospital, Chicago, from November **24, 1973**, through December **2, 1973**. The bullet was imbedded in his leg and the doctors were unable to remove it.

All hospital and doctor bills were paid by the Illinois Department of Public Aid.

The Claimant testified that at the time of the crime he was **21** years of age and was unemployed. Prior to the shooting, he had been employed since June of **1972** as a custodian for the Chicago Housing Authority. He resigned this position in August, **1973**, when it became apparent that the Federal funding which paid his salary was about to be terminated. He earned **\$545.00** per month from that job. Thereafter he commenced receiving public aid at the rate of **\$261.00** per month.

During his period of unemployment he registered with the Illinois State Employment Services and was sent by this agency to be interviewed for a job as a janitor for the McDonnell & Miller Division of ITT. The interview took place on the same day as the shooting. The Claimant was hired at a salary of **\$4.50** per hour for a **40** hour week but was unable to commence the employment due to his injuries.

The Claimant was released from the hospital on December 2, 1973, and required the use of a wheel chair for two months thereafter. During the month of February 1974 he was obliged to use crutches. He became physically able to work on March 1, 1974, at which time he was informed that the janitor's position at McDonnell & Miller had been filled by another person. He continued to seek employment and became employed on April 1, 1974.

During the time of Claimant's physical infirmities he continued to receive the same sum from the Illinois Department of Public Aid—\$261.00 per month.

Section 4 of the Act provides:

Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses. . . . Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less. . . .

Applying this section to the facts of this case, it appears to this Court that the Claimant did suffer a compensable loss of earnings. Although he had not actually commenced his employment at the time of his injury, he had been hired. Were it not for the crime inflicted upon him, he would have earned far in excess of the \$500.00 maximum provided by the Act. Even using his previous job as a basis, his lost earnings would be in excess of the **\$500.00** maximum allowed by the Act.

Accordingly, it is the finding of this Court that the Claimant suffered lost earnings from November 24, 1973, to March 1, 1974, a period of three and one-quarter months. Based on the \$500.00 maximum provided by the Act, his gross compensable lost earnings were \$1,625.00.

During his period of incapacity he received \$848.00 from the Illinois Department of Public Aid.

In determining the amount of compensation to which an applicant is entitled, Section 7d of the Act states that this Court:

Shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmen's Compensation Act or from local governmental, state or federal funds or from any other source, (except annuities, pension plans, federal social security benefits and the net proceeds of the first \$25,000.00 of life insurance that would inure to the benefit of the applicant . . .).

In the claim before us, the benefits received from the Department of Public Aid of \$848.00 plus the statutory deduction of \$200.00 must be deducted from the gross amount of loss, leaving a loss compensable under the Act of \$577.00.

The Court further finds that the Claimant cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant; that there is no evidence of any wrongful act or substantial provocation by the Claimant for the crime and the victim and his assailant were not related nor sharing the same household.

The Court further finds that the Claimant was a victim of a violent crime as defined in Section 2(c) of the Act, to wit, "Aggravated Battery", (Ill.Rev.Stat., 1973, Ch. 38, Sec. 12-4).

The Court further finds, pursuant to Section 12 of the Act, that the Claimant was ably represented by Burton Weinstein, an attorney at law, and that, based upon the work done by said attorney and the results accomplished, a reasonable fee for his services is \$100.00.

IT IS THEREFORE ORDERED that the order of this Court of July 15, 1975, denying compensation to the Claimant is hereby vacated and set aside.

IT IS FURTHER ORDERED that the total sum of \$577.00 be awarded Wayne Bass, an innocent victim of a violent crime.

IT IS FURTHER ORDERED that attorney, Burton Weinstein, may charge as fees for his services in connection with the hearing of this cause the sum of \$100.00.

(No. 74-CV-21 — Claimant awarded \$10,000.00.)

IN RE APPLICATION OF MARILYN BROWN, ADMX. OF THE ESTATE
OF CLYDE STEELE.

Opinion filed July 22, 1975.

SPENCER W. SCHWARTZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Wrongful act or substantial prouocation.*

SAME—*Statutory deduction.* Two hundred dollar statutory deduction is deducted from total loss sustained and not from the \$10,000.00 maximum amount payable under the Act.

PER CURIAM.

This claim arises out of a criminal offense that occurred on December 16, 1973, at approximately 5:00 p.m. at 7929 South Jeffery, Chicago, Illinois. Marilyn Brown, the administratrix of the estate of the victim, Willie Clyde Steele, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," Ill.Rev.Stat., 1973, Ch. 70,071, et seq. (hereafter referred to as the "Act").

This court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Court, and a report of the Attorney General of the State of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted before the Court, the Court finds:

1. That the decedent, Willie Clyde Steele, age 30,

was a victim of a violent crime, as defined in §2(c) of the Act, to wit: "Murder", (Ill.Rev.Stat., 1973, Ch. 38, §9-1).

2. That on December 16, 1973, at approximately 5:00 p.m., the victim and his wife, Ruth Steele, were both shot in front of their home at 7929 South Jeffery, Chicago, Illinois.

3. That according to statements from eye witnesses taken by the police immediately after the shooting the following events took place. Shortly before 5:00 p.m. on December 16, 1973, the victim left his house, got in his car, and drove away. He returned home about 10 minutes later and got out of his car carrying a shopping bag. The assailant then walked up to the victim and said, "You think you are a bad M.F." (sic) The assailant then raised his hand which held a gun. The victim then said, "Wait a minute, man, let's talk about it." The victim started backing up and the assailant then took his gun and fired it at the victim. The victim's wife, Ruth Steele, was then seen running across her lawn screaming. When she got to her husband, she dropped to her knees. The assailant then came behind her and said something to her. He then put his gun to her head and fired it.

4. That both the victim and his wife were taken to Jackson Park Hospital in Chicago where they were both pronounced dead.

A further and more detailed summary of the facts and information considered by the Court is contained in the Investigatory Report prepared by the Attorney General. A copy of said report is retained in the Court's file in this matter and the facts as reported therein are incorporated in this opinion by reference.

5. That the Claimant, Marilyn Brown, has been duly appointed as administratrix of the estate of the victim, Clyde Steele, by the Circuit Court of Cook

County, Probate Division, c09791, No. 74 P 2372, Docket 792, Page 212.

6. That there was no evidence to indicate that the victim's death was attributable to his wrongful act or the substantial provocation of his assailant.

7. That there was no indication that the victim was a relative or ever shared the same household as the assailant.

8. That the criminal offense was promptly reported to law enforcement officials and the Claimant has fully cooperated in the apprehension and prosecution of the assailant.

9. That the assailant has been identified as Harry A. Curtis of 7933 South Jeffery, Chicago, Illinois. The assailant has been indicted on a charge of murder. A trial was held October 8, 1974, in the Circuit Court of Cook County, Courtroom of Judge Porter. The assailant was found not guilty by reason of insanity and has been committed to the Department of Mental Health of the State of Illinois.

10. That compensation is sought under the Act for funeral expenses and loss of support for the victim's two minor children.

11. That funeral and burial expenses paid for the victim were in the amount of \$1,825.25.

12. That, at the time of his death, the victim was 30 years old and, according to actuarial tables, had a life expectancy of 40 years. Therefore, we must conclude that the victim's dependent children lost his financial support for 40 years.

13. That the victim's average monthly earnings for the 6 months immediately preceding his death were \$1,088.36, but only \$500 per month can be considered as

the basis for determining loss of support, pursuant to §4 of the Act.

14. That, based on the victim's normal life expectancy of 40 years, and taking \$500 per month as his average earnings, the loss of support to his dependent children is computed to be **\$240,000.00**.

15. That, in determining the amount of compensation to which an applicant is entitled, §7(d) of the Act states that this Court—

(d) . . . shall deduct \$200 plus the amount of benefits, payments or awards, payable under the 'Workmen's Compensation Act,' or from local governmental, State or Federal funds or from any other source, (except annuities, pension plans, federal social security benefits and the net proceeds of the first (\$25,000)Twenty-five Thousand Dollars of life insurance that would inure to the benefit of the applicant. . .).

We interpret the above provision to mean that the benefits received by the victim's family as a result of his death, and deduction of **\$200.00**, shall be deducted from the total loss sustained and not from the \$10,000 maximum amount payable under the Act. On this point, this court has adopted an opinion of the Massachusetts Supreme Court on the same point arising under the provisions of an Act identical to ours in all material respects: *Gurley v. Commonwealth*, 296 N.E.2d 477 (1973).

16. That in the claim before us life insurance benefits in the amount of **\$157,000.00** have been paid to Beulah Thompson of Greenville, Alabama, as guardian of the victim's two minor children, Veronica Steele, age 9, and Tracey Steele, age 4.

17. That the first **\$25,000** of life insurance benefits are not to be deducted.

18. That in the claim before us, benefits received from other sources which must be deducted from the loss as contemplated by §7(d) of the Act were shown to be in the total sum of \$132,000. This amount, plus the

statutory deduction of \$200, having been deducted from the gross amount of loss as calculated in **711** and **714**, leaves a loss far in excess of the \$10,000 maximum amount that can be awarded as compensation under the Act for any loss resulting from a violent crime. Hence, the Claimant is entitled to an award in the amount of \$10,000.

IT IS **HEREBY ORDERED** that the sum of \$10,000.00 (Ten Thousand Dollars and No Cents) be awarded to Marilyn Brown as administratrix of the estate of Clyde Steele, to be held for the use and benefit of the victim's minor children, Veronica Steele and Tracey Steele, to be distributed in accordance with the Probate Court of Cook County.

[See Opinion in Claim **74-CV-22** finding no compensable loss due to the death of this victim's wife, Ruth Steele, also a murder victim in the same occurrence.]

(No. 74-CV-38—Claimants awarded \$10,000.00.)

IN RE APPLICATION OF **ELLEN LEWIS AND MARY ANN SCOTT**.

Opinion filed April 2, 1976.

SPENCER W. SCHWARTZ, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Loss of support where victim was unemployed at time of crime. Nothing in the Act requires, as a precondition to a claim for loss of support, that victim be employed on the date of his death.

SAME—Dependency of illegitimate children. Illegitimate child of a victim may be a dependent under the Act where proof of paternity and of dependency is clear and convincing.

SAME—Statutory deduction. Two hundred dollar statutory deduction is deducted from the total loss sustained and not from the \$10,000.00 maximum amount payable under the Act.

SAME—Rules of distribution for multiple dependents.

PER CURIAM.

This claim arises out of a criminal offense which occurred on December 17, 1973, at 5541 South Ada Street, Chicago. Ellen Lewis, wife of the victim on behalf of herself and her son, Massawa Kawana Lewis, and Mary Ann Scott on behalf of her child, Melvin Lewis Williams, all seek compensation under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the "Act").

The contested issues presented to this Court are:

- (1) Whether there can be compensable loss of support under the Act where the victim was unemployed at the time of the crime against him but was employed a short time prior to the crime, and
- (2) Whether an illegitimate child may be a dependent under the Act.

The facts of the crime were that on December 17, 1973, at approximately 12:45 a.m. the body of the victim, Cleophus Lewis, was discovered on the lawn in front of 5541 S. Ada Street, Chicago.

The person discovering the body reported to the Chicago Police Department and the victim's body was transported to the Central Community Hospital, Chicago, where it was determined that the victim had died of gun shot wounds by an unknown assailant.

As to the first issue, the evidence was undisputed that the deceased was not employed at the time of his death. He had however been employed by Libby, McNeil & Libby of Chicago from 1967 (except for a 9 month layoff in 1968) to and including December 11, 1973, which was six days prior to his death. On December 11, 1973, he had been fired from his job by reason of an unsatisfactory attendance record. His loss of job was the culmination of a series of warnings and suspensions by his employer for this unsatisfactory attendance. His average monthly earnings were slightly in excess of \$1,000.00 despite his absences.

Section 4 of the Act provides:

Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes . . . in the case of death, funeral and burial expenses and loss of support to the dependents of the victim. Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less

There is nothing in the Act which requires, as a precondition to a claim for loss of support, that the victim be employed on the date of his death. In fact, the contrary seems to be indicated by the language of Section 4.

It is the opinion of this Court that, if it is more likely than not that the victim would have been gainfully employed in the time immediately following crime, his dependents have, in fact, suffered a loss of support. Being employed currently at the time of the crime is but one good indication of the likelihood of future employment and therefore the likelihood of future loss to dependents. Another good indication of the likelihood of future employment and therefore of possible future loss to the victim's dependents is recent employment and the length of that recent employment.

In this case, the victim had been originally employed by McNeil, Libby & McNeil on August 14, 1967, until he was laid off on May 3, 1968. He was rehired on June 1, 1970, and worked continuously, except for his unsatisfactory absences and suspensions, from that time until he was finally terminated. The absences which caused his termination were on the average 1 day per month and on a few occasions from 2 days to 2 weeks. Suspensions were up to 5 days.

This record of employment to within one week of his death and continuous employment for 3½ years indicates to this Court that it is more likely than not that he would have continued to be gainfully employed thereafter. We hold therefore that his dependents suffered a loss of support. Pursuant to Section 4 of the Act, the compensa-

ble loss must be computed on the basis of \$500.00 per month. Based on the average life expectancy of a 30 year old man, it is apparent that the loss of support to his dependents resulting from his death is computed to be far in excess of the \$10,000.00 maximum that can be awarded under the Act.

As to the second issue, the victim's wife, Claimant Ellen Lewis, testified that she married the victim in 1963. There was born of that marriage one surviving child, namely, Massawa Kawana Lewis, age 4. She further testified that her husband was the father of an illegitimate son, namely, Melvin Lewis Williams. The victim openly regarded Melvin Lewis Williams as his son and supported him on a regular basis.

Claimant Mary Ann Scott testified that she is the mother of Melvin Lewis Williams who was born on September 4, 1963, and that the victim, Cleophus Lewis, was the father of that child. She was never married to the victim. The victim paid her about \$15.00 per week for the child's support and brought him gifts. At times he would miss a week of paying support but would make up the deficiency at a later date. He orally acknowledged the child as his to her relatives.

The Social Security Administration of the United States Government made a determination that the child was the victim's son and pays to her for his support the sum of \$250.80 per month.

The victim never acknowledged the paternity of Melvin Lewis Williams by any written statement or any statement in open court nor were any proceedings ever instituted to establish paternity. The birth certificate named Mary Scott as mother but did not name a father, although the certificate gave the father's age as 21 which corresponded to the victim's age at that time.

Melvin Lewis Williams, age 11, testified that

Cleophus Lewis, the victim, was his father. The victim gave his mother **\$15.00** every week and gave him **\$1.00** allowance per week. The victim took the boy out and brought him gifts at various times. The victim called him "Melvin," but at times called him "son." At times Melvin Lewis Williams stayed at his father's home.

Kelly Williams, Robert Williams, and Richard Yearby all testified on behalf of Mary Ann Scott that the victim orally acknowledged Melvin Lewis Williams as his son and that they witnessed the payment of support money to Mary Ann Scott.

The evidence, set out above in detail, is clear and convincing that the child, Melvin Lewis Williams, was in fact the illegitimate son of the victim, Cleophus Lewis, and was being supported by the victim at the time of his death. The fact that the victim's wife, Claimant Ellen Lewis, verified this, in spite of the fact that such verification might lessen the amount of her own award, is most convincing. Her testimony and the testimony of Melvin Lewis Williams and the other corroborating witnesses were most credible and were uncontradicted.

It has long been the law in Illinois that an illegitimate child cannot inherit from his father. The harshness of this doctrine has survived many attacks. The leading case in the country positing this rule is *Labine v. Vincent*, 401 U.S. 532 (1971). In this case, an illegitimate child was denied the right to inherit from her father because the applicable Louisiana statutes governing inheritance by illegitimates had not been complied with. The reasoning applied by the United States Supreme Court in upholding the pertinent Louisiana statutes could, of course, be modified to apply to the similar statutes in the State of Illinois merely by substituting Illinois for Louisiana in the Court's opinion. The Court said:

Of course, it may be said that the rules adopted by the Louisiana Legislature discriminate against illegitimates . . . But the power to make rules to establish, protect, and strengthen family life as well as to regulate the disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and the people of Louisiana to the legislature of that State. Absent a specific constitutional guarantee, it is for that legislature, not the life-tenured judges of this Court, to select from among possible laws. We cannot say that Louisiana's policy provides a perfect or even a desirable solution or the one we would have provided for the problem of the property rights of illegitimate children. Neither can we say that Louisiana does not have the power to make laws for distribution of property left within the State.

Respondent points out that by virtue of Illinois Revised Statutes, Chap. 106½, Sec. 54, only the Circuit Court of Cook County may hold hearings to establish paternity and that such an action must be brought within two years of the birth of the child unless the person accused has acknowledged the paternity of the child by a written statement or in open court, and that since no paternity action was ever filed, the Court of Claims is without jurisdiction to adjudicate the issue of paternity.

This Court is of the opinion that the concepts enumerated in the *Labine* case and by the Illinois statutes regarding paternity are not applicable to the situation in the instant case.

The Act provides in Section 3 that:

A person is entitled to compensation under this Act if: (a) he . . . is a *person* who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim. . . . (emphasis added)

Section 2(a) uses the word "person" in defining the applicant. Section 8(b) of the Act also uses the word "person" or "persons" in discussing dependents.

In the case of *Yellow Cab Company v. Industrial Commission of Illinois*, 42 Ill.2d 226 (1969), the Illinois Supreme Court construed the question of whether an illegitimate child of a deceased employee may recover under Section 7(a) of the Workmens Compensation Act. Section 7(a) of the Workmens Compensation Act provides for compensation in fatal cases to "any widow, child or

children whom the victim was under legal obligation to support at the time of the accident." The Court held that in a situation similar to the instant case where there had been no proceedings ever instituted to establish paternity but where the evidence was clear that the employee was the father, the illegitimate child was entitled to an award.

The language of the Crime Victim's Compensation Act is much broader than the Workmens Compensation Act. The Workmens Compensation Act uses the word "child or children" while the Crime Victims Compensation Act uses the broader word "persons." The Workmens Compensation Act limits awards to those children whom the victim was "under legal obligation to support." The **Crime Victims** Compensation Act does not specifically limit a dependent to one whom the victim was under any legal obligation.

Since the Illinois Supreme Court has decided in the *Yellow Cub* case that an illegitimate child may recover under the Workmens Compensation Act, a statute that is more narrowly drawn than the Crime Victims Compensation Act, it follows that an illegitimate child may likewise recover as a dependent under the Crime Victims Compensation Act.

The United States Supreme Court in the case of *Gomez v. Perez*, 409 U.S. 535 (1973), held:

. . . a State may not invidiously discriminate against illegitimate children by denying them substantial benefits accorded children generally. We therefore hold that once a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother. For a State to do so is illogical and unjust.

This Court further takes note of the recent Illinois Appellate Court case holding in *Cessna v Montgomery*, 28 Ill.App.3d 887, 329 N.E.2d 861 (1975), which the two year statute of limitations for paternity actions was held

unconstitutional and in which case the Court held that natural fathers have the duty of supporting their illegitimate children.

This Court therefore holds that an illegitimate child of a victim of a violent crime may be a dependent under the Crime Victims Compensation Act where the proof of paternity and of dependency is clear and convincing and further holds that the proof in the instant case meets that standard.

Therefore, Melvin Lewis Williams is entitled to share in the award for loss of support.

The Court further finds that Cleophus Lewis was the victim of a violent crime, to wit "Murder", Illinois Revised Statutes **1973, Chap. 38, Sec. 9-1**. The Court further finds that there is no evidence to indicate that the deceased victim provoked the crime nor that he was related to or shared the same household of the assailant and that the Claimants cooperated with law enforcement officials.

The Court further finds that the Claimant Ellen Lewis paid funeral expenses to the Drexel Funeral Home in the amount of **\$2,230.00**.

In determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

(d) shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmens Compensation Act or from local governmental, state or federal funds or from any other source (except annuities, pension plans, federal social security benefits and the net proceeds of the first \$25,000.00 of life insurance that would inure to the benefit of the applicant . . .).

We interpret the above provision to mean that the benefits received by the victim's family as a result of his death and deduction of **\$200.00** shall be deducted from the total loss sustained and not from the \$10,000.00 maximum amount payable under the Act. On this point

we are adopting a recent opinion of the Massachusetts Supreme Court on the same point arising under the provisions of an act identical to ours in all material respects: *Gurley v. Commonwealth*, 296 N.E.2d 477, (1973).

In the claim before us, the Claimant Ellen Lewis received \$10,000.00 as proceeds of a life insurance policy and all the Claimants are receiving social security benefits, none of which is deductible under the Act. They received no other benefits from other sources. The statutory deduction of \$200.00 having been deducted from the total amount of loss, it is apparent that the net loss sustained by the Claimants is far in excess of the \$10,000.00 maximum amount that can be awarded under the Act.

Before an award is granted for loss of support the Claimant Ellen Lewis is entitled to an award to compensate her for her pecuniary loss suffered as a result of the funeral expense of \$2,230.00. This leaves an amount of \$7,770.00 that can be awarded for loss of support.

This Court finds that the following persons were dependent upon the victim Cleophus Lewis for support:

Ellen Lewis, surviving spouse
Massawa Kawana Lewis, son, a minor
Melvin Lewis Williams, son, a minor

Under the circumstances the Court is required to interpret and comply with the following language of the Act found in Section 8(b):

If the Court of Claims finds, in the case of an application made by a person dependent for (her) support on a deceased victim, that persons other than the applicant were also dependent on that victim for their support, it (the Court) shall also (1) name those persons in its order; (2) state the percentage share of the total compensation award and the dollar amount to which each is entitled, and (3) order that those amounts be paid to those persons directly or, in the case of a minor, incompetent, to his (her) guardian or conservator, as the case may be.

It would seem appropriate and reasonable to order the distribution of the \$7,770.00 in accordance with the rules of distribution stated in Section 11, Sub-Section 1 of the Probate Act. This rule would allow one-third to the victim's surviving spouse, Ellen Lewis, and the remaining two-thirds divided equally among the victim's two children, Massawa Kawana Lewis and Melvin Lewis Williams.

To obviate the necessity of the mothers of each of the two minor children being appointed guardian of her child's estate and considering all other facts in this case, the Court believes that the best interests of the deceased victim's family would be served by ordering that the award for loss of support be disbursed to the Claimants' natural guardians, their mothers, in periodic payments as authorized in Section 8, Subparagraph 4 of the Act. As the natural guardians of their minor children, the mothers have a legal obligation to provide for suitable support and education for their children. In fulfilling this obligation, we believe that the mothers would necessarily be required to expend the proper amount from each monthly payment received hereunder for the care and nurture of her child.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS :

(1) The sum of \$2,230.00 is awarded to the Claimant Ellen Lewis, the wife of the victim of a violent crime, for funeral expenses this Claimant paid for and on behalf of the victim.

(2) The total sum of \$5,180.00 is awarded to Ellen Lewis and Massawa Kawana Lewis, her minor child, collectively, as persons who were dependent for their support on Cleophus Lewis, the deceased victim of a violent crime. This award shall be paid to Ellen Lewis in eleven monthly installments, the first ten in equal amounts of \$500.00 each and the last installment in the amount of \$180.00.

(3) The sum of \$2,590.00 is awarded to Mary Ann Scott, natural guardian of Melvin Lewis Williams, a person who was dependent for his support on Cleophus Lewis, the deceased victim of a violent crime. This award shall be paid in eleven monthly installments, the first ten in equal amounts of \$250.00 each and the last installment in the amount of \$90.00.

IT IS FURTHER ORDERED that all of the payments above mentioned shall be made from the Court of Claims Appropriation insofar as it is legally possible to do so.

As to the matter of the Petition for attorneys fees filed by attorney, Spencer W. Schwartz, the Court finds that, considering the time spent by said attorney in representing the Claimants at the hearing and preparation for the hearing, the complexity of the issues litigated and the results obtained, said attorney may charge the Claimant, Ellen Lewis, the sum of \$1,400.00 and said attorney may charge the Claimant, Mary Ann Scott, the sum of \$600.00. This finding and order is pursuant to Section 12 of the Act.

(No. 74-CV-51—Claimant awarded \$3,009.58.)

IN RE APPLICATION OF THOMAS A. GOKEY.

Opinion filed August 28, 1975.

THEODORE FLORO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General for Illinois.

CRIME VICTIMS COMPENSATION ACT—*Cooperation with law enforcement officials.*

PER CURIAM.

This claim arises out of an incident which occurred on April 26, 1974, at 200 Main Street, Woodstock, Illinois. The Claimant seeks compensation under the provisions of the “Crime Victims Compensation Act,”

Ill.Rev.Stat., 1973, Ch. 70, §70, 71, et seq. (hereafter referred to as the "Act").

The sole issue presented to the Court is whether the Claimant cooperated fully with law enforcement officials.

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The Claimant testified that on April 26, 1974, at about 4:00 p.m., while he was at his own apartment he answered a knock on his apartment door and upon his opening the door he was pushed aside by three assailants who demanded the Claimant's money. The Claimant gave the assailants all of the cash in his wallet. After he gave the money the assailants knocked him to the floor and beat, kicked, and stabbed him. As soon as the assailants left he screamed for help at his window and the police were called by a neighbor.

At the arrival of the police the Claimant told the police that he had been robbed and stabbed by three assailants and wanted to be taken to the hospital. He gave the police a description of the assailants to the best of his knowledge. The description was sketchy at best. The assailants wore dark glasses but during the struggle the Claimant was able to knock the glasses off one of the assailants.

Claimant was taken to the hospital and during his hospital stay was visited by police officers who showed him pictures of suspects. Claimant was unable to identify any of the persons as his assailants.

The day after the Claimant was released from the hospital he went to the Sheriffs Office and looked at more pictures of suspects and from time to time thereafter he was shown more of such pictures but was unable at any time to identify any of them as being his assailants.

On one occasion of the showing of pictures he was shown two pictures of persons whom the police indicated were the actual criminals but the Claimant was unable to recognize them.

The Claimant normally wears glasses but was not wearing them at the time of the crime.

Donald Bosewell testified for the Respondent that he was an officer with the Woodstock Police Department assigned to the case. During his investigation he came across a lead which resulted in his obtaining an admission from a person that such person was one of the assailants. The statement that the police officer took from the admitted assailant also implicated two other persons.

The officer never showed the picture of the party who made the admission to the Claimant because this party was a juvenile. He did however show the Claimant pictures of the two men who were implicated by the statement of the juvenile but the Claimant was unable to identify them.

No one was ever charged with a crime as a result of the incident and subsequent investigation.

The Act provides in Section 2(d) that a person is entitled to compensation if, among other conditions,

Applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant.

In this case, the police apparently complained that even though they believed, based on good information, that they had apprehended the assailants, the Claimant failed to identify them.

Full cooperation with law enforcement officials means compliance with every reasonable request of law enforcement officials. It obviously does not require a victim to recognize one as his assailant **if** the victim is

sincerely unable to do so, even though the police have good reason to believe they have actually apprehended the assailant. To hold otherwise would be to require the victim to commit perjury.

In this case, the victim complied with all reasonable requests of the police. He provided descriptions as best as he could of the criminals. He viewed pictures of suspects on numerous occasions. There was absolutely no evidence that the Claimant deliberately refused to identify an assailant whom he actually recognized. There is no evidence of any motive on the part of the Claimant to refuse cooperation.

The Court, therefore, finds that the Claimant fully cooperated with the law enforcement officials.

The Court further finds that the Claimant was a victim of a violent crime as defined in Section 2(c) of the Act, to wit, "Aggravated Battery," Ill.Rev.Stat., 1973, Ch. 38, Sec. 12-4; that there is no evidence of any wrongful act or substantial provocation by the Claimant for the crime and the victim and his assailant were not related nor sharing the same household.

The Court further finds that the Claimant incurred medical and hospital expenses which were partially covered by insurance benefits, and the gross amount of the pecuniary loss for these items as computed before deductions and setoffs is as follows:

1. Hospital	\$2,299.58
2. Medical	1,115.00
3. Tests and Drugs	15.00
Total:	\$3,429.58

The Claimant has received benefits from other sources in the amount of \$220.00.

In determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

shall deduct \$200.00 plus the amount of benefits, payments or awards payable under the Workmans Compensation Act or from local governmental, state or federal funds or from any other source, (except annuities, pension plans, federal social security benefits and the net proceeds of the first \$25,000.00 of life insurance that would inure to the benefit of the applicant . . .).

That in the claim before us, the benefits received by the Claimant from other sources which must be deducted from his loss as contemplated by Section 7(d) of the Act were shown to be in the sum of \$220.00. This amount plus the statutory deduction of \$200.00 having been deducted from the gross amount of loss leaves a loss compensable under the Act of \$3,009.58.

IT IS THEREFORE ORDERED that the total sum of \$3,009.58 be awarded Thomas A. Gokey, an innocent victim of a violent crime.

(No. 74-CV-72—Claim denied.)

IN RE APPLICATION OF ROSEMARY SIMONE.

Opinion filed September 5, 1975.

MICHAEL McARDLE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Cooperation with law enforcement officials.*

PER CURIAM.

This claim is for loss of support and for funeral and burial expenses under the “Crime Victims Compensation Act,” Ill.Rev.Stat., 1973, Ch. 70, 070, 71, et seq. (hereafter referred to as the “Act”).

The claim arises out of a criminal offense of murder (Ill.Rev.Stat., Chapter 38, Sec. 9-1). Evidence was taken before Commissioner of this Court, Martin C. Ashman. It was stipulated by the parties that on April 21, 1974, at

approximately 10:24 a.m. Frank Korinek of 4144 West 25th, Chicago, Illinois, telephoned the Chicago Police Department, Area 4 Homicide, to report that there was a body in the back seat of a 1967 Chevrolet, parked at 2446 South Kedvale, Chicago, Illinois. Beat Car 1014 was assigned to the scene. The officers discovered a body in the back of the aforementioned automobile. The victim had been gagged, his arms and legs bound behind him, and there were four gun shot wounds in the back of his head. The body was later identified as that of William Simone, age 45, of 4934 West 25th Street, Chicago, Illinois. The report of investigating officers, Jack Stewart, Star No. 13029 and Steve Barnas, Star No. 14103, indicates that a survey of the neighborhood produced several people who indicated that they had heard sounds like shots or firecrackers at approximately 11:30 p.m. on April 20, 1974.

The Claimant is Rosemary Simone, widow of the victim. The victim and the widow were parents of three dependent children, namely, Denise Simone, age 9, Anthony Simone, age 8 and Michelle Simone, age 4.

Claimant testified that the investigating police officer informed her of her husband's death and asked if they could look through her husband's personal effects in order to find any further information about the incident, and she refused to allow them access to his personal effects because the request was made at the same time as she was informed of the death. The officers never made any further requests of her.

The issue presented to this Court is whether the Claimant cooperated with the authorities to the extent required by this Court.

Section 3(d) of the Act provides that an applicant is entitled to compensation if, among other things:

The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant.

This Court feels that the failure to allow the police to inspect the deceased's personal effects was a lack of full cooperation. The physical facts indicated a premeditated crime had been committed. Certainly, the deceased's personal effects might have provided a clue or an investigative lead to the officers. It is well known that the sooner an investigation is done the fresher the clues would be. A reasonable person, even though overcome by grief over the brutal murder of a loved one, would want to help the police in the apprehension of the murderer and would have, at least, made an appointment for the investigating officers to go through the personal effects of the decedent. This help to the investigating officers was not given in this case by the applicant.

The Act uses the words "cooperated fully." Full cooperation means compliance with every reasonable request by law enforcement officials. The request by the police in this case was reasonable and was not complied with. Therefore, the Claimant has not cooperated fully with law enforcement officials as required by the Act.

Having decided that the Claimant is not entitled to the benefits of the Act, it is not necessary for the Court to decide other issues in the case, of dependency and reasonableness of certain bills.

It is therefore the opinion of this Court that the claim of the Claimant be denied.

(No. 75-CV-5—Claimant awarded \$2,745.20.)

IN RE APPLICATION OF MICHAEL CIBULA.

Opinion filed February 14, 1977.

MICHAEL CIBULA, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMAN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION—Cooperation with law enforcement officials. No one is required by the law to do a useless act.

PER CURIAM.

Claimant seeks compensation for alleged medical and hospital bills incurred which claim was submitted pursuant to the provisions of the “Crime Victims Compensation Act,” Ill.Rev.Stat., **1973**, Chapter **70**, Section **70**, **71**, et seq. (hereafter referred to as the “Act”).

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The only issue presented was whether the Claimant cooperated with the police as required by the Act.

The parties stipulated that on January **17**, **1974**, at approximately **6** o'clock p.m., the Claimant, Michael J. Cibula, was coming home from work. On his way home, he stopped off at a tavern and had a few drinks. Claimant then left the tavern and began walking home. While walking he was stopped by three men at **700** North Pulaski Road, Chicago, Illinois. The men asked the Claimant for money. When the Claimant told the men he had no money, one of the men shot him the abdomen. Claimant then continued to walk to his home at **3960** W. Ontario, Chicago, Illinois. When he got home, the Claimant's brother called the police. The police arrived and transported the Claimant to St. Anne's Hospital, **4950** West Thomas Street, Chicago, Illinois.

Surgery was performed on the Claimant by Dr. R. Gipps. Final diagnosis was gunshot wound of the abdomen, right plural cavity, with right hemothorax and liver injury. Claimant was discharged from the hospital on January **26**, **1974**, and followup was done on an outpatient basis.

Officer Steven Barnas of Area **4** Homicide, Chicago

Police Department, testified that he was assigned to the Cibula case. He went to the hospital and observed the Claimant while the Claimant was in the emergency room. The Claimant was obviously intoxicated. The Claimant gave the officer an oral statement and then was taken to surgery.

About a week or ten days later the officer asked the Claimant to come into the station and view photos of possible suspects and the Claimant said that he didn't remember anybody and had been intoxicated at the time of the incident and would therefore not go to the police station.

The Claimant testified that just prior to the crime the Claimant had drunk six or eight bottles of beer and "a couple" of shots of whiskey.

He testified that while in intensive care the police asked him to view photos and he told the police that it was no use because he couldn't recognize anybody by reason of his intoxication, the darkness of the area, and the fact that he had been taken by surprise. He therefore felt that he would not be able to pick the assailant out of any photos and would not go to the police station to view them.

All the evidence was to the effect that at the time of the crime the Claimant had been intoxicated. The Claimant was consistent in his statements to the police and in his testimony that he was unable to recognize any one of his assailants mostly because of his intoxication.

The law is well settled that no one is required by the law to do a useless act. It is apparent that viewing photos, under the circumstances, would have been a useless act. Therefore, the Claimant's failure to do so cannot, in the opinion of this Court, be construed as a lack of cooperation.

The Court, therefore, finds as follows:

1. That the Claimant, Michael Cibula, age 54, was a victim of a violent crime, as defined in Section 2(c) of the Act, to wit: "Aggravated Battery", (Ill.Rev.Stat., 1973, Chap. 38, §12-4).

2. That there is no evidence of any provocation by the Claimant for the attack upon him.

3. That the Claimant and his assailants were not related and sharing the same household.

4. That the Claimant cooperated with the police authorities to the extent sufficient under the Act.

5. That the Claimant received sick pay for the period of time that he was out of work and therefore makes no claim for any loss of earnings.

6. That the Claimant incurred hospital and medical expenses as follows:

Hospital	\$2,055.20
Medical	890.00
	<hr/>
TOTAL:	\$2,945.20

7. That no evidence was presented to indicate that the Claimant has received or will recover any benefits from other sources as a result of his injury.

8. That in determining the amount of compensation to which a Claimant is entitled §7(d) of the Act states that this Court—

(d) shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmens Compensation Act, or from local governmental, State or Federal funds or from any other source, . . .

That after the statutory deduction of \$200.00 the amount of compensation to which the Claimant is entitled is \$2,745.20.

IT IS **HEREBY ORDERED** that the sum of \$2,745.20 be awarded to the Claimant, Michael J. Cibula, the innocent

victim of a violent crime, and to the extent allowed by law the said sum shall be paid.

(No. 75-CV-23—Claimant awarded \$629.27.)

IN RE APPLICATION OF KAREN L. SPENCER.

Opinion filed October 28, 1975.

KAREN L. SPENCER, Pro Se.

**WILLIAM J. SCOTT, Attorney General of Illinois,
PEGGY BASTAS, Assistant Attorney General.**

CRIME VICTIMS COMPENSATION ACT—*Pecuniary loss as* contemplated by the Act. Baby-sitting expenses and taxi fares incurred by Claimant while seeking medical treatment are not compensable.

SAME—*Appropriate* medical expenses or hospital expenses. Compensation for future plastic surgery was denied where doctor advised against such.

PER CURIAM.

This claim arises out of an incident which occurred on November 7, **1973**, at **434** West Normal Parkway, Chicago, Illinois. The Claimant seeks compensation for various expenses and for lost earnings under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., **1973**, Ch. **70**, Sec. **70, 71**, et seq.) (hereafter referred to as the "Act").

The issues presented for hearing were as follows:

- (a) Whether bills incurred for baby sitting for Claimant's children are compensable under the Act.
- (b) Whether taxi fares incurred in going to and from medical treatment are compensable under the Act.
- (c) The extent of her lost earnings, if any.
- (d) Whether the Claimant is in need of plastic surgery which might be compensable under the Act.

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The Claimant was on November **7, 1973**, on her way

to visit her father. She had just left a bus and was walking North on Normal Avenue at 69th Street in Chicago, Illinois, when a group of five male youths came up behind her and forced her into an abandoned building at **434** West Normal Parkway, Chicago, Illinois. They took her purse, watch and ring and forced her to disrobe. All five youths then raped her and one hit her several times with what she believed to be a pipe wrench. Thereafter the Claimant dressed herself and went to the next building where she summoned help. She was bleeding heavily from her head wounds.

The Claimant described her assailants to the police and one of them was subsequently arrested and convicted of aggravated battery and sentenced from **4** to 8 years in a penal institution.

The medical records of the University of Chicago Hospitals and Clinics indicate that the Claimant received multiple lacerations to the forehead and scalp, painful contusions on the head and puffed up eyes. Multiple sutures were applied.

She was treated by Dr. Jose Calub who reported that the Claimant suffered from multiple contusions of the head and body and severe anxiety neuroses.

The doctor reported that the Claimant was incapacitated from work from November **7, 1973**, to March 6, **1975**, because of these problems.

The Claimant testified that all but \$6.00 of her medical expenses were paid by the Illinois Department of Public Aid. In addition, she incurred \$50.00 in baby sitting expenses rendered to her children and \$6.00 in taxi fares going to and from the hospital for medical treatment.

She sees her doctor approximately three times each month and is still seeing her physician for headaches and

pains in her side as a result of the violent crime inflicted upon her. She was employed by Mrs. Tronshaw as a baby sitter (in her own home) and had been earning **\$10.00** per week in this capacity.

Section 4 of the Act provides as follows:

Pecuniary loss to **an** applicant under this Act resulting from injury or death to a victim includes, in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses for treatment by Christian Science Practitioners and nursing care appropriate thereto . . . Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on **\$500.00** per month whichever is less . . .

Although in some cases, such as an emergency requiring an ambulance, transportation to a place for medical treatment could be considered a medical expense, there is no proof in the record here that taxi fares were required medically for transportation to and from the hospital, and therefore the Court finds that reimbursement for taxi fares are not compensable in this case.

It is clear that the Act makes no reference to expenses incurred by victims of crime other than medical, hospital and lost earnings. Baby-sitting charges incurred cannot in any way be considered as a part of any of these three categories. Therefore, this Court finds that baby sitting charges necessarily incurred by reason of a victim's incapacitation are not compensable under the Act.

As to the Claimant's own lost earnings, there is no question that they are compensable under the Act, and although the length of time of incapacitation in this case seems unusual, this Court will not substitute its judgment for the judgment of the attending physician and therefore finds that the Claimant lost 19 months of **work** at the rate of **\$43.33** per month or a total lost earnings of **\$823.27**.

As to the issue of possible future plastic surgery, her plastic surgeon, Dr. J. Vickers Brown, indicated that "Ms. Spencer was advised that surgical correction will not lead to significant improvement of her scars. Revisional surgery is not advised in this case."

Inasmuch as her doctor advises no surgery is required, there is, of course, no compensation to be paid in this regard.

Accordingly, the Court finds as follows:

(1) That the Claimant was a victim of a violent crime as defined in Section 2(c) of the Act, to wit: "Battery", (Ill.Rev.Stat., 1973, Chapter 38, § **12-4**).

(2) That there was no evidence of any wrongful act or substantial provocation by the Claimant for the attack upon her.

(3) That there is no evidence that the victim and her assailants were related or sharing the same household.

(4) That the criminal offense was promptly reported to law enforcement officials and the Claimant has fully cooperated with their requests for assistance.

(5) That the Claimant has received benefits from the Illinois Department of Public Aid which covered all but \$6.00 of her medical and hospital expenses.

(6) That the Claimant sustained loss of earnings in the amount of \$823.27 which together with her unreimbursed medical expenses gives a total compensable loss to the Claimant in the amount of \$829.27.

(7) That the Claimant has not received any other insurance or disability benefits as a result of her injury.

(8) That in determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

(d) . . . shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmans Compensation Act or from local governmental, state or federal funds or from any other source. . . .

That the statutory deduction of \$200.00 having been deducted from the gross amount of loss leaves an amount of compensable loss, sustained by the Claimant, in the amount of \$629.27.

IT IS HEREBY ORDERED that the total sum of \$629.27 be awarded to the Claimant, Karen L. Spencer, in the amount of \$629.27.

(No. 75-CV-28—Claim dismissed.)

IN RE APPLICATION OF ROSE STEINHAUF.

Opinion filed January 12, 1976.

ROSE STEINHAUF, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, **Assistant Attorney General.**

CRIME VICTIMS COMPENSATION ACT—*Burden of proof* Claimant bears burden of proving that injuries were result of a violent crime.

PER CURIAM.

This claim arises out of an incident that occurred on May 12, 1974, at the subway stairs at 190 North State Street, Chicago. The Claimant seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Section 70, 71, et seq.) (hereinafter referred to as the "Act").

The sole issue presented to the Court is whether the Claimant was the victim of a violent crime as defined in the Act. The Court entered an order on June 12, 1975, dismissing this claim and the Claimant moved the Court for a hearing in accordance with Section 9 of the Act and said hearing was granted.

The Claimant testified that on May 12, 1974, she

was employed at Marina City as a waitress. She left her place of employment at about 9:30 p.m. or 9:45 p.m. and walked to the intersection of State and Lake with the subway entrance at 190 North State and arrived there approximately 10 o'clock p.m. It was fairly crowded on the subway steps and subway entrance area at that time.

While descending the steps leading to the subway the Claimant felt a push in her back. The push was a strong one and felt as if it were done by a fist. Claimant fell down the stairs to the bottom and was rendered unconscious and next remembers waking up in the **emergency** room of a hospital. The police report indicates that they received a call regarding the incident at 10:33 p.m. on that date.

The Claimant suffered a fractured arm and scarring about her body as a result of the incident.

The Claimant testified that at the time she descended the subway stairs she had money in her purse and a watch, both of which she discovered missing after a few days in the hospital. She reported the missing items to the police but the police did not follow through with any further investigation.

In order for a person to qualify for compensation under the Act, that person must have been killed or injured as a result of a crime of violence perpetrated or attempted against him. An accidental fall down the subway stairs would, of course, not qualify.

A Claimant has the burden of proof in establishing that he or she was the victim of a violent crime. In this case, it is the Court's opinion that the Claimant failed to meet that burden.

The testimony of the Claimant was totally unsubstantiated by any evidence of a willful assault or battery by an assailant which caused her to fall down the stairs.

There is no way that the Claimant herself can be sure that the pressure upon her back was wilfully administered by an assailant. While this Court has no doubt that the Claimant testified truthfully, the Court cannot assume a willful attempt to push her down the stairs without evidence.

The fact that she discovered some days later that her money and watch were missing does not supply the absent corroboration. The Claimant lay unconscious at the bottom of the stairs of a public subway entrance for a period of time, at least one-half hour. She was taken unconscious to a hospital where she was attended to by various hospital aides. There was adequate time and opportunity for someone other than the party who Claimant maintains pushed her to have taken her possessions. Thus the lost money and watch **do** not necessarily mean that the Claimant was robbed by an assailant.

While the Court understands that proof of a violent crime can be difficult under the circumstances where the alleged victim did not see the assailant, this Court must base its decision on evidence. In this case it is just as likely that the Claimant's injuries were caused by accidental means as by a violent crime.

Therefore, this Court finds that the Claimant was not a victim **of** a crime as defined in Section 2(c) of the Illinois Crime Victims Compensation Act. Accordingly, this claim is hereby dismissed.

(No. 75-CV-29 — Claim dismissed.)

IN RE APPLICATION OF PEARL NAILS.

Opinion filed April 5, 1976.

ALDUS S. MITCHELL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
PEGGY BASTAS, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*wrongful act or substantial provocation*. Where victim was engaged in an illegal activity, to wit, gambling, at time of crime his claim is not compensable.

.PER CURIAM.

This claim arises out of a criminal offense that occurred on April 6, 1974, at 2046 Dewey, Evanston. Jeffrey Lewis, Garry Lewis and Lance Lewis, by Pearl Nails, their mother and next friend, seek compensation for loss of support pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the "Act").

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The facts were that the deceased victim, Jesse E. Lewis, was playing poker with others at the home of Billie Bradford, 2046 Dewey, Evanston. The game was a weekly game for money. The stakes are unknown.

The evidence was that at this poker game the deceased victim "checked" on a hand to which the assailant, J.B. Boyd, objected as being against the rules of the game. The victim agreed after an argument that his action was against the rules and acceded to the demands of the assailant. Nevertheless, the assailant pulled a gun and shot the victim who was dead on arrival at Evanston Hospital.

The assailant was charged with and found guilty of murder and sentenced to the penitentiary.

This Court need not comment on the various issues raised by the parties as to the pecuniary losses sustained inasmuch as we find that this claim does not qualify for compensation under the Act.

Section 3(f) of the Act states that a person is entitled to compensation under the Act if:

(f) the injury to **or** the death of the victim was not substantially attributable to his wrongful act **or** substantial provocation of his assailant; . . .

Gambling is a crime in the State of Illinois under the provisions of Chapter **38**, Section 28.1 of the Illinois Revised Statutes.

This Court has already decided in the case of *In Re Application of Effie Hardy*, 76-CV-2, that where a victim was killed as a result of arguments during gambling, such a victim substantially contributed through his illegal acts to his own death.

This Court in the Hardy case said:

Although this court can not ignore this brutal killing, neither can it ignore the evidence before it as to the circumstances leading to it. The Act under which this claim is made is intended to compensate for injuries or death to victims who were innocent of any contribution to their own injury **or** death. The victim in this case, placed himself in a situation, through his illegal activities, where further illegal activities would be the probable result. Surely, the victim did not expect to be murdered, but just **as** surely he did place himself in a situation where he can not be considered an innocent victim.

This reasoning is wholly applicable to the case before us.

The Claimant in the case before us argues that, because the victim acceded to the objections of the assailant, the victim did not provoke his assailant within the meaning of the Act. We can not agree. The victim in this case, by engaging in an illegal activity, substantially contributed to his own death for the purposes of the Act.

Therefore the Court finds that compensation is not authorized under the Act and the claim is hereby dismissed.

(No. 75-CV-40—Claim denied.)

IN RE APPLICATION OF BETTY L. LOHR.

Opinion Filed August 22, 1975.

RICHARD C. MOENNING, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Statutory interpretation of Act. Fear is not a compensable injury nor is loss of earning due to fear of returning to work a compensable loss.

PER CURIAM.

Claimant seeks compensation for alleged loss of earnings, insurance premiums paid, and attorneys fees expended. She has submitted her claim pursuant to the provisions of the “Crime Victims Compensation Act,” Ill.Rev.Stat., (1973) Ch. 70, §70, 71, et seq. (hereafter referred to as the “Act”).

The Claimant, Betty L. Lohr, was the only witness presented. She testified that, during the period from February 8, 1974, through March 8, 1974, she was employed as a teacher at Harrison High School, 2840 West 24th Street in Chicago; and that ten incidents occurred during that period which caused her to lose wages, pay insurance premiums, and incur attorneys fees.

The 10 incidents to which she testified can be broken down into two categories: assaults and threats.

1. Assaults by students on the Claimant which necessitated medical attention. There were three such assaults, described as follows:

(a) On February 26, 1974, a student, Russell Bolar, pushed her several time causing a “capsule” injury to her left middle finger. The finger remained stiff and painful for several months thereafter, and at the time of the hearing was still slightly stiff. The bandaged finger is

shown in Claimant's photo exhibit **#1**.

(b) On March 5, **1974**, a student at the school, Rodney Lester, closed his locker door upon Claimant's right leg, bruising her leg.

(c) On March 6, **1974**, she bruised her left arm while being pushed by a student, Maria Carillo. The bandaged arm is also shown on Claimant's exhibit **#1**. Claimant saw Dr. T. S. Wright for these injuries and made six visits to the doctor for all of the above injuries. Her medical bills were all paid by the Chicago Board of Education.

2. Seven incidents of threats against the life of the Claimant were made orally and in writing. The written threat consisted of a drawing of the Claimant with a **skull** and cross bones.

All of the above incidents were reported by the Claimant to the security personnel at her school, to her principal, and to the police. She cooperated with the police, and in two instances testified against the assailants in the Juvenile Court.

In some of the incidents no action was taken, nor were proper reports filed by the principal of the school. In some incidents the security personnel of the school failed to come to the Claimant's aid.

As a result of the assaults and threats, Claimant became greatly fearful of returning to work at that school. For this reason she refused to return to work commencing on March 8, **1974**.

Claimant wrote a letter of complaint to Mayor Richard J. Daley and requested an emergency transfer to a different school. The request for an emergency transfer was turned down by the Board of Education on March 26, **1974**. On May 15, **1974**, an Appeal Hearing was held at the Board of Education. At that hearing the Claimant

presented a written statement containing essentially the same incidents to which she testified at the hearing before this Court.

On July **25, 1974**, Claimant was notified by the Board of Education that her appeal for transfer was granted, and she was reassigned to a different school on July **30, 1974**.

On both direct and cross examination, the Claimant *admitted that her physical injuries did not prevent her from going to work*, but that it was her apparently well-founded fear of future assaults combined with a lack of security at the school which caused her to voluntarily refuse to return to work. During the time between March **8, 1974**, and until she was reassigned she sought no other employment.

The Claimant claims loss of earnings for **99** days [from March 8, **1974** to June **15, 1974**], at a monthly rate of \$880.00; plus **\$132.50** in Blue Cross insurance premiums paid by her which would normally have been paid by her employer; plus attorneys fees of **\$571.60** for lawyers she was obliged to retain in endeavoring to obtain a transfer.

No medical testimony or medical reports were offered by the Claimant. The Respondent introduced no evidence. The sole issue is a question of law requiring a judicial interpretation of the Act.

Claimant asks this Court to declare, as a matter of law, that a well-founded fear of assault, based on previous assaults and threats, is an "injury" as contemplated by the Crime Victims Compensation Act.

The Claimant contends that the word "injured" under the definition of victim in §2(c) of the Act, and the word "injury" as used in §4, do not preclude psychological injury or mental or nervous shock. Whether those words

are limited to physical injury alone need not be decided in this case since the Claimant introduced no evidence of mental or nervous shock. Her claim for loss of earnings, due to her self-imposed absence from work, was based solely on her fear of future assaults.

As authority for her contention, Claimant cites an article in **1973 Ill. Law Forum**, Volume 1, entitled "Scope of Programs for Governmental Payment for Crime Compensation", in which other jurisdictions have allowed compensation for a shopkeeper who closed his shop for fear of assault, a fear based on a past assault, and other such examples referred to in the article. A reading of the article indicates that the cases cited were English cases, based on statutes in England much wider in scope than the Illinois Act, and are therefore not applicable to the case at bar.

This Court is required to carry out the true intent and meaning of the General Assembly as expressed in the Illinois Crime Victims Compensation Act. We find nothing in the Act that authorizes payment for loss of earnings due to fear. It is readily apparent that a different interpretation would open the State treasury to a plethora of claims for lost earnings by persons afraid to work in high crime areas. If that had been the legislature's intent, it would have been specifically stated in the Act.

The Court, therefore, finds that no compensation in this claim is authorized under the Act. Accordingly, this matter is closed.

(No. 75-CV-55—Claimant awarded \$8,890.50.)

IN RE APPLICATION OF IDA SMITH.

Opinion filed June 28, 1976.

IDA SMITH, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Wrongful* act or substantial prouocation.

SAME—Acquittal of alleged assailant. Court need not consider whether or not the alleged assailant has been apprehended or brought to trial nor the result of any criminal proceedings against that person.

SAME—Determination of dependency for loss of support. Mere entitlement to support is not dependency under the Act.

SAME—Distribution of proceeds of award.

PER CURIAM.

This claim arises out of an incident which took place on February 19, 1974, at 131st Street and Ellis Avenue, Chicago. The Claimant seeks compensation for funeral expenses and loss of support under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the “Act”).

The issues presented to the Court are as follows:

- (1) Whether the death of the victim was attributable to his own wrongful act or substantial provocation of his assailant.
- (2) Whether the Claimant’s claim for loss of support for herself and the child of the victim is valid.
- (3) Whether the Claimant may receive an award based on dependency while there are other persons who had a legal right to support from the victim who cannot be found and who have not filed claims in this Court.

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

As to the first issue, the evidence produced by the Claimant was that the victim and a woman, Gwendolyn

Wilson, left the home of the victim's mother, Ida Smith, at 3:30 p.m. on the date in question. The decedent was carrying a set of household type knives in a container which contained slots for the knives and which container was in a bag. The woman, Gwendolyn Wilson, was a girlfriend of the decedent and was the wife of the assailant, having been separated from the assailant and awaiting a divorce.

According to the testimony of Gwendolyn Wilson, the decedent and Gwendolyn Wilson left Ida Smith's home and went to Gwendolyn Wilson's sister's home at 13056 South Ellis, Chicago. They left the sister's home immediately thereafter and as they were leaving they saw Gwendolyn Wilson's husband, Kerry Wilson, the alleged assailant.

As they walked to a bus stop, Kerry Wilson followed calling them dirty names. Kerry Wilson then walked away to his own home only to return a short time later. He accosted the decedent at the bus stop, shaking his finger in the decedent's face and threatening to kill the decedent. The decedent and Kerry Wilson then struggled against each other while facing each other. The decedent then staggered away and Gwendolyn Wilson noticed that Kerry Wilson had a knife in his hand. The victim staggered toward the street and fell. As he lay in the street Kerry Wilson said, "Die, nigger, die. If you don't die I'll kill you anyway." The assailant Kerry Wilson then fled.

The victim was dead on arrival at the hospital of a stab wound in the chest.

The assailant, Kerry Wilson, was indicted on a charge of murder and was subsequently acquitted.

According to Gwendolyn Wilson's testimony the knife used was not one of the knives in the container being carried by the victim. Those knives remained

intact in the container in the bag, which was left torn on the street.

The Respondent was unable to produce Kerry Wilson for the hearing before this Court and therefore did not submit any evidence on this issue.

From the evidence, the Court must conclude that the death of the victim was not attributable to his own wrongful act or substantial provocation.

Walking along the street with the spouse of another cannot be held to be provocation for an assault with a knife, especially when the assailant and his spouse are already separated and in the process of being divorced. The evidence was undisputed that the assailant followed the victim, threatened him, struggled with him physically, had a knife in his hand at the time the victim fell, and cursed and threatened him while he was lying on the street. Any conclusion other than that the attack was unprovoked would have to be based on conjecture.

In reaching this conclusion, the Court has not considered the fact of the acquittal of Kerry Wilson of the criminal charges arising from the incident, inasmuch as the Act provides in Section 7 that the Court:

Need not consider whether or not the alleged assailant has been apprehended or brought to trial nor the result of any criminal proceedings against that person.

Accordingly, this Court finds that Frank T. Smith III was the innocent victim of a violent crime, i.e. "Murder," Ill.Rev.Stat., 1973, Ch. 38, Sec. 9-1.

The Court further finds that the death of the victim was not attributable to his own wrongful act nor substantial provocation of his assailant.

The Court further finds that the victim and the assailant were not related nor sharing the same household.

The next questions to be decided are those of dependency.

According to Claimant Ida Smith's testimony, the Claimant is the mother of the victim. The victim was married to Pamela Smith. Of that marriage there were born three children, namely Michael Smith age **5**, Mark Smith age **4** and Frank Smith IV, age 8. The wife, Pamela Smith, left the victim in **1971** taking the children, Michael Smith and Mark Smith, with her and leaving Frank Smith IV to live with the mother of the victim, the Claimant Ida Smith.

The Claimant Ida Smith testified that she has attempted to locate Pamela Smith and the two children, Mark and Michael, but has been unable to do so and at this time does not know where they are located. To her knowledge, her son, the victim, was not sending any support money to his wife nor to his children, Mark and Michael Smith. The Claimant Ida Smith did concede, however, that it was possible that her son had sent Pamela Smith money without the knowledge of the Claimant.

The deceased was, at the time of his death, an employee of the United States Postal Service. He had commenced the employment on October **22, 1973**, and his average monthly salary was **\$443.50** per month.

According to her testimony, the Claimant received from the victim approximately one-half of his net pay check i.e. approximately **\$200.00** per month. She used this money for food and clothing for herself and the child, Frank Smith IV, and for her other household expenses. Claimant Ida Smith's only other source of income was **\$79.00** per month from Social Security.

It is obvious from the evidence the Claimant, mother of the victim, received the majority of her support from the victim and that she relied on the victim for support and was to a substantial degree supported by the victim

The Court therefore finds that the Claimant Ida Smith was a dependent of the victim, Frank Smith III, within the meaning of the Act. The Court further finds that Frank Smith IV, son of the victim, was a dependent of the victim.

As to the third issue, the Act provides in Section 8(b) as follows:

If the Court of Claims finds, in the case of an application made by a person dependent for his support on a deceased victim, that persons other than the applicant were also dependent on that victim for their support, it shall also (1) name those persons in its order; (2) state the percentage share of the total compensation award and the dollar amount to which each is entitled and (3) order that these amounts be paid to those persons directly or, in the case of a minor or incompetent, to his guardian or conservator, as the case may be.

The children of the victim, Mark Smith and Michael Smith, were unquestionably entitled to support from the victim and the wife, Pamela Smith, might have been entitled to support from the victim. But the Court has no evidence to indicate that these persons were, in fact, being supported by the victim at the time of the victim's death. The evidence tends to indicate that they were not dependent upon the victim for support.

It is the opinion of this Court that mere entitlement to support is not dependency under the Act.

Where there is no evidence that a victim was actually contributing to a person's support, or at least was under an order of a court to contribute to that person's support, there can be no dependency under the Act. In looking at the Act as a whole, it is clear that the legislature intended to compensate those persons who lost actual out-of-pocket money as a result of violent crime. Every provision of the Act is strictly limited to out-of-pocket expense.

One who is not actually receiving support at the time of the crime cannot be said to have had an out-of-pocket loss. An expectancy of support is not dependency under the Act.

It is, therefore, the opinion of this Court that an award for loss of support be made to Ida Smith and Frank Smith IV only. The Court is mindful of the fact that neither the minor children, Mark Smith and Michael Smith, nor anyone on their behalf were present before the Court and cannot be found. Therefore, if at any time hereafter, and prior to the full disbursement of the award in this case, an application for a modification of this award is made on their behalf on the grounds that they were actual dependents of the victim, then this Court may at that time modify this award.

The victim was **25** years old at the time of his death. According to the United States Department of Health, Education & Welfare mortality tables, the victim had a life expectancy of 40.6 additional years. Taking **\$443.50** per month as the victim's average monthly earnings, and taking \$200.00 per month as the actual loss of support to his family resulting from his death, the lost support compensable under the Act is far in excess of the \$10,000.00 maximum that can be awarded under the Act.

The Court further finds that the Claimant Ida Smith incurred funeral and burial expenses as a result of the death in the amount of \$1,109.50 for which she is entitled to reimbursement before an award is granted for loss of support.

That, in determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the "Workmans Compensation Act", or from local governmental, state or federal funds or from any other source, (except annuities, pension plans, federal social security benefits and the net proceeds of the first \$25,000.00 of life insurance that would inure to the benefit of the applicant . . .).

We interpret the above provision to mean that the benefits received by the victim's family as a result of his

death and a deduction of \$200.00 shall be deducted from the total loss sustained and not from the \$10,000.00 maximum amount payable under the Act. On this point, we are adopting a recent decision of the Massachusetts Supreme Court on the same point arising under the provisions of an Act identical to ours in all material respects: *Gurley v. Commonwealth*, 296 N.E.2d 477 (1973).

That in the claim before us, no benefits other than social security, which is not deductible under the Act, have been received by either Claimant from other sources. The statutory deduction of \$200.00, having been deducted from the amount of loss calculated above, leave an amount of loss sustained by the Claimant far in excess of the \$10,000.00 maximum amount that can be awarded under the Act for any loss resulting from a violent crime.

That, before an award is granted for loss of support, the Claimant Ida Smith is entitled to an award to compensate her for the pecuniary loss suffered as a result of the funeral, namely \$1,109.50. Hence, the Claimant Ida Smith is entitled to an award of \$1,109.50. This leaves an amount of \$8,890.50 that can be awarded to the Claimants for lost support of which Claimant Ida Smith is entitled to fifty (50%) per cent and Frank Smith IV is entitled to fifty (50%) per cent.

As to the award to Frank Smith IV, the Court takes notice of the fact that this minor child is being cared for by his grandmother, Ida Smith, who stands in loco parentis to the minor and is the natural guardian of the said minor child.

Under these circumstances, the Court is required to interpret and comply with the following language of the Act found in Section 8(b):

If the Court of Claims finds, in the case of an application made by a person dependent for his support on a deceased victim, that persons other than the applicant were also dependent on that victim for their support, it shall also

(1) name those persons in its order; (2) state the percentage share of the total compensation award and the dollar amount to which each is entitled, and (3) order that these amounts be paid to those persons directly or, in the case of a minor or incompetent, to his guardian or conservator, as the case may be.

To comply strictly with the above legislation, it would seem appropriate and reasonable to order the distribution in accordance with the Probate Act of Illinois which would require the opening of a guardianship estate.

However, to make distribution in this manner, we believe would impose an undue hardship on the grandmother, Ida Smith. If the funds were paid to her in a lump sum, she would be holding one-half of those funds in trust for the minor child, Frank Smith IV. Although she is guardian of his person, she would have no power to administer his estate, nor use his funds, unless she is duly appointed guardian of the minor's estate as provided by law. *Perry vs. Carmichael*, (1880) 95 Ill. After such appointment, she would be required to manage the child's funds frugally under the direction of the appointing court and present periodic accounts of her guardianship to such court. She would also be responsible for court costs and any legal expenses required in filing her petition for appointment, oath, surety bond, and accounts.

To obviate the necessity of the Claimant, Ida Smith, being appointed guardian of her grandchild's estate, and considering all other facts in this case, the Court believes that the best interest of the victim's family would be served by ordering that this award be disbursed to the Claimant in periodic monthly payments as authorized in Section 8(a)(4) of the Act. As the natural guardian of the said minor child, the grandmother, Ida Smith, has undertaken the obligation of providing suitable support for the said minor child. Having undertaken this obligation, we believe that she would necessarily expend the proper amount from each monthly payment received

hereunder for the care and maintenance of the minor child, Frank Smith IV, as well as for her own necessities.

IT IS THEREFORE HEREBY ORDERED as follows:

(1) The sum of \$1,109.50 is awarded to the Claimant Ida Smith, the mother of the victim of a violent crime, for funeral expenses this Claimant paid for the victim.

(2) The total sum of \$8,890.50 be awarded to Claimant Ida Smith and the minor child of the victim, Frank Smith IV, collectively, as persons who were all dependent for their support on Frank Smith III, the deceased victim of a violent crime.

(3) That the aforesaid award in Paragraph (2) of this order be paid to the Claimant, Ida Smith, in eighteen (18) monthly installments, the first seventeen (17) in equal amounts of \$500.00 each and the last installment in the amount of \$390.00.

(4) That during the pendency of the payments hereunder, the Court may modify this order upon proper application being made by any person on behalf of the other minor children of the deceased victim, Frank Smith III.

(No.75-CV-61— Claim dismissed.)

IN RE APPLICATION OF JAMES S. POCKROSS .

Opinion filed April 8, 1976.

JAMES S. POCKROSS, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Computation of loss of earnings.*

SAME—*No compensation awarded for mental anguish and psychological problems.*

PER CURIAM.

This claim arises out of a criminal offense which occurred on January 15, 1974, at 814 West Webster, Chicago. Claimant, James S. Pockross, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the "Act").

An order was entered by the Court on July 15, 1975, dismissing the claim and upon Claimant's moving for a hearing in accordance with Section 9 of the Act, a hearing was granted.

The facts are undisputed. On January 15, 1974, the Claimant took a break from his job at Metro Help Crisis Intervention Office, 2210 North Halsted Street, Chicago, to walk Ms. Elyse Friedman to her residence at 2157 **North Fremont, Chicago. On his way back to work, an** unidentified assailant demanded money from the Claimant in front of 814 W. Webster, Chicago. The Claimant refused, whereupon the assailant fired once into the ground. The Claimant then fled eastbound toward Halsted Avenue. The assailant fired another shot hitting the Claimant in the back. The Claimant returned to the Metro Help Crisis Intervention Office, whereupon the Chicago Police Department was notified. The police took the Claimant to Augustana Hospital where he was hospitalized from January 15, 1974, to January 18, 1974. The Claimant has fully recovered and suffers no permanent disability.

The Claimant's pecuniary losses were as follows:

Hospital	\$359.00
Medical	\$100.00
Drugs	\$ 5.00
	<hr/>
Total	\$464.00

In addition, the Claimant lost six days of work from his job. His average monthly income for the six months preceding the crime was \$1,073.00. According to Section 4 of the Act, loss of earnings is determined as follows:

. . . loss of earnings, loss of future earnings, and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less.

For the six days during which the Claimant missed work the Court determines that the loss, on the basis of \$500.00 per month, is \$98.64.

Thus the total gross losses of the Claimant is **\$557.64.**

The Claimant received \$379.50 from Blue Cross/Blue Shield.

In determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

(d) . . . shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmens Compensation Act, or from local governmental, state or federal funds or from any other source (except annuities, pension plans, federal social security benefits and the net proceeds of the first \$25,000.00 of life insurance that would inure to the benefit of the applicant . . .).

Applying this provision we must deduct from the total pecuniary loss of \$551.64, the \$379.50 received from Blue Cross/Blue Shield and the \$200.00 as provided in Section 7(d), leaving no amount due from the State to the Claimant.

The Claimant argues that both the \$500.00 maximum for lost earnings and the \$200.00 deductible provisions of the Act are unfair and the Court should consider his mental anguish and psychological problems caused by the criminal act, although the same are not accompanied by pecuniary loss.

It is, of course, basic that it is the legislature of this state that is entrusted with the responsibility of making laws and not this Court. This Court must therefore hold that under the Act no compensation in the case before us is authorized.

The claim is hereby dismissed.

(No. 75-CV-81 and 75-CV-297, consolidated. Claimant awarded \$1,404.25.)

IN RE APPLICATION OF LENA D. DANIELS.

AND

IN RE APPLICATION OF CARL P. DANIELS.

Opinion filed October 20, 1975.

BERTRAM D. MEYERS, Attorney for Lena D. Daniels.

CHARLES V. FALKENBERT, Attorney for Carl P. Daniels.

WILLIAM J. SCOTT, Attorney General of Illinois.

CRIME VICTIMS COMPENSATION ACT—*Determination of dependency for loss of support.*

PER CURIAM.

The claims herein arise out of the death of Earl Daniels, age 13, who died on March 11, 1974, as a result of bullet wounds sustained on March 9, 1974, at 9130 South Bishop, Chicago, Illinois.

Both claims presented here were filed pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 71, et seq.) (hereafter referred to as the "Act").

Claimant, Lena Daniels, mother of the victim, makes claim as a dependent for alleged loss of support, and Claimant, Carl P. Daniels, father of the victim, makes claim for reimbursement for hospital and funeral expenses paid by him.

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The facts of the incident were that the victim, Earl Daniels, was attending a party given by James L. Avery at 9130 S. Bishop, Chicago, Illinois. At 11 o'clock p.m., six persons walked into the apartment. The lights went out and shots were heard. When the lights were turned on

again the victim and one other person had been shot. The victim died of the wounds inflicted two days later.

Six persons were arrested in connection with the shooting but the case against them was dismissed at a hearing in a criminal court.

As to the claim of Lena D. Daniels, mother of the victim, the sole issue presented to the court is whether the Claimant, Lena D. Daniels, was a person who was dependent on the deceased victim.

Claimant, Lena D. Daniels, testified that she had been married to Claimant, Carl Daniels, in 1956 but the marriage ended in divorce in 1970. The victim, Earl Daniels, was age **13** and was a seventh grade student with average grades. He did odd jobs around the neighborhood including cutting grass, shoveling snow, mopping floors, taking care of dogs, and raking leaves. He worked mostly for 'Christine Fulford and Alma Settles, both neighbors of the Claimant. He averaged about **\$40.00** per week during the six months prior to his death. The boy gave his mother all of the money he earned, out of which she gave him an allowance of \$10.00 per week and the balance was used in common with her other funds for rent and food, and she also was able to save out of said money the sum of approximately **\$15.00** per week for her son, Earl Daniels. She kept no records of the income and expenses.

She testified further that she received **\$42.50** per week from her former husband, Claimant Carl P. Daniels, under the provisions of her Decree for Divorce. The Decree provided for **\$37.50** per week for child support for three children (including the deceased victim) and **\$5.00** per week for alimony. She also received \$135.00 per month from the Illinois Department of Public Aid and she also was otherwise gainfully employed.

Lena Daniels' testimony was somewhat supported by

her witness, Christine Fulford, who testified that she lived alone in a **14** room house and she employed the victim for household tasks including cleaning the basement, washing windows, and mopping floors, and also for mowing the lawn, walking and bathing her dog, and running errands. She paid him by the job but at no set rate. He averaged \$20.00 to \$25.00 per week from her.

Also testifying for Lena Daniels was Alma Settles who stated that the deceased victim cut her lawn, raked leaves, and shovelled snow. He averaged about \$5.00 per week for these jobs.

The victim's father, Claimant Carl Daniels, testified that the boy spent most of the summer with him and spent some weekends throughout the rest of the year with him and while with him the **boy** did not do any jobs for money. The victim never told his father that he was earning any money whatsoever.

The Act provides in Section **3** that:

A person is entitled to compensation under this Act if:

(a) he . . . is a person who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim.

The Act contains no further definitions of a dependent.

Principles applicable to the factual situation presented here have been thoroughly explored by the Supreme Court of Illinois in construing the words "partially dependent" in the Illinois Workmens Compensation Act. In *Roseberry v. Industrial Commission*, **33 Ill.2d 520**, 211 N.E. 2d 702, the Court said that:

A child contributes to the support of his parents within the meaning of the Act when he contributes a substantial sum to the support of the family although this sum is less than the actual cost of his support and maintenance where the child is a minor or in a position to demand legal support from his parents. . . . The test is whether the contributions were relied upon by the applicant for her means of living judging by her position in life, and whether she was to a substantial degree supported by the employee at the time of the latter's death.

The facts of the ***Roseberry*** case were that the deceased, a 19 year old bachelor, was irregularly employed for the year prior to his injuries and subsequent death and that for the 13 months prior to his injury his total net earning were approximately \$830.00 or approximately \$65.00 per month. His mother who was the Claimant earned \$3,900.00 for the previous 12 months. The deceased employee would cash his pay checks and give his mother the cash and the mother would give him what he needed. She kept no records of what she gave him.

The Court in the ***Roseberry*** case concluded that the Industrial Commission was justified in finding a lack of partial dependency.

The rules of law enumerated are supported by a line of cases including: ***Art Castle u. Industrial Commission***, 394 Ill. 62, 67 N.E. 2d 177; ***General Constr. Co. vs. Industrial Commission***, 314 Ill. 58, 145 N.E.2d 90; ***Bauer & Black us. Industrial Commission***, 322 Ill. 165, 152 N.E. 590; and ***General Constr. Co. v. Industrial Commission***, 314 Ill. 58, 145 N.E. 90.

Applying these rules to the present case, it is clear that the Claimant, receiving child support and alimony from a former husband, receiving public aid and also being gainfully employed, could not have relied on the odd job earnings of a 13 year old boy. Even if one would wholly disregard the testimony of the victim's father, the Court is left with the testimony of the Claimant Lena Daniels' supporting witnesses that a total of \$25.00 to \$30.00 per week was earned by the boy. The Claimant testified that she gave her son \$10.00 per week allowance and saved \$15.00 per week on his behalf. This leaves little or no money being contributed by the decedent toward his mother's support.

It is apparent in this case that the Claimant, Lena D.

Daniels, was not supported to any substantial degree by her son and therefore does not meet the test of the rules of law pertaining to dependency.

This Court therefore finds that the Claimant Lena D. Daniels was not a dependent of a victim of a crime as defined in the Act and her claim is hereby denied.

As to the claim of Claimant Carl P. Daniels, the evidence shows that he paid the following amounts as a result of the crime:

Funeral	\$ 980.00
Grave	\$ 200.00
Tombstone	\$ 255.25
Hospital	\$ 169.00
Total:	<hr/> \$1,604.25

The Court finds that Earl Daniels, son of Carl P. Daniels, was the victim of a violent crime as defined in Section 2(c) of the Act, to wit: "Murder", (Ill.Rev.Stat. 1973, Chap. 38, Sec. 9-1.) Further, that the victim's death was not attributable to the victim's wrongful act or substantial provocation and the victim and his assailants were not related nor sharing the same household and that the Claimant has fully cooperated with law enforcement officials.

In determining the amount of compensation to which an applicant is entitled, Section 7(d) of the Act states that this Court:

(d) shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under the Workmen's Compensation Act, or from local governmental, State or Federal funds or from any other source, (except annuities, pension plans, federal social security benefits and the net proceeds of the first (\$25,000) Twenty Five Thousand Dollars of life insurance that would inure to the benefit of the applicant . . .).

Claimant Carl P. Daniels received no other benefits which qualify as deductions under this section.

Applying this section, the Claimant is entitled to \$1,604.25 less \$200.00 for a net of \$1,404.25.

IT IS THEREFORE ORDERED that the sum of \$1,404.25 be awarded Carl P. Daniels, the father of an innocent victim of a violent crime.

IT IS FURTHER ORDERED that the sum of \$200.00 is reasonable considering the time invested by counsel and that therefore Charles V. Falkenberg, attorney for the Claimant, Carl P. Daniels, may charge said amount to the Claimant pursuant to Section 12 of the Act.

(No. 75-CV-94— Claimant awarded \$10,000.00.)

IN RE APPLICATION OF PETER PIPPAS.

Opinion filed October 23, 1975.

LEONARD F. AMARI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
KENNETH MASON, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Extent and duration of disability and amount of lost earnings.

PER CURIAM.

Claimant seeks compensation for alleged loss of earnings, medical bills, and hospital bills. He has submitted his claim pursuant to the provisions of the “Crime Victims Compensation Act,” Ill.Rev.Statutes 1973, Chapter 70, Section 70, 71, et seq. (hereafter referred to as the “Act”).

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The only contested issues before the Court is the extent and duration of the Claimant’s disability and the amount of lost earnings, if any.

The Claimant was the manager of a restaurant and bar located at 504 West Van Buren, Chicago, Illinois,

which business was owned by the Post Stop Inc., a corporation. The Claimant was an officer of the corporation and held some stock in the corporation.

On February 7, 1974, at about 2:05 a.m., the Claimant, age 44, was in the process of closing his business at that address. One of the employees of the business stepped outside of the premises to look **for** a cab when he was forced inside by three armed persons. While a pistol was held at the Claimant's back, the Claimant was beaten on the top of his head with a pipe at least three times and once in the forehead and was knocked unconscious. He was shot on his right side.

The Chicago police responded to a call **for** aid. The Claimant was taken by the police to the Cook County **Hospital for emergency surgery. The Claimant was** hospitalized from February 7, 1974, to February 17, 1974. During that time, an exploratory laparotomy was performed in treatment of the bullet wound in the upper quadrant of the abdomen. The surgery was unsuccessful in removing the bullets and the Claimant still has one **or** more bullets in his body.

The Claimant testified that he still has pain in the abdomen, on occasions has difficulty in breathing, cannot walk very far, and still has spells of dizziness. He exhibits a scar on his forehead extending beyond the hair line.

Claimant still visits the doctor on occasion and takes medication to relieve his symptoms **of** headaches or dizziness. Because of his dizziness he is unable to walk more than one or two blocks. He testified that he has not been back to work since the incident and has not been employed nor sought employment since the incident of February 7, 1974.

At the time of the incident he had been earning **\$125.00** per week.

On cross-examination the Claimant stated that he has trouble sleeping nights because of bad dreams. He feels like someone is hitting him. He is afraid all of the time and wakes up in the morning feeling afraid. He is afraid to go out at night.

He has fallen down on the street from his headaches. He feels weak when he thinks about the incident that caused him his problems. Many times he gets headaches and dizziness when 'thinking about the incident.

The Claimant's medical evidence consisted of the testimony of **Dr.** Elia Stambolis who testified as to the history he took from the Claimant which was essentially the same as the Claimant's testimony in Court.

The doctor's examination on February 21, **1974**, revealed healed surgical wounds in the abdomen. The patient complains of headaches in the back of his head, dizziness and lost memory. He passes out from dizzy spells. He has difficulty in breathing. In the opinion of the doctor he considered that the Claimant's condition was permanent by reason of there having been no improvement after one and a half years after the incident.

On cross-examination the doctor admitted that he had not taken any encephalograph tests. The doctor also admitted that the eye motion reflexes were normal and that the motor reflexes were normal and there was no way of telling whether the patient was a malingerer. There were no objective symptoms found by the doctor to account for the Claimant's persistent complaints. He diagnosed the Claimant's condition as a post cerebral concussion syndrome but had no objective findings upon which to base this diagnosis. He considered the Claimant permanently unemployable despite the lack of objective evidence.

The Respondent argues to the Court that although it

is clear that the Claimant lost some time from work, he cannot be compensated for more than a fairly minimal period of time because he was unable to establish by objective evidence that it was necessary for him to stay away from work for any extended period of time. The Respondent further argues that it is fear of returning to work rather than a physical disability that prevents the Claimant from returning to gainful employment.

It is the opinion of this Court that the Claimant did establish by a preponderance of the evidence that it was necessary for him to absent himself from work for an extended period of time.

His injury was quite severe and he still carries bullets within his body. While his doctor could find no objective evidence which could account for the Claimant's ailments, the doctor did not take all of the tests that were available to the medical profession to ascertain the cause of these ailments. In fact the doctor's tests were minimal. However, it was clear from the doctor's testimony that the doctor considered his patient completely unemployable.

The Court having heard the testimony of the Claimant and having observed his manner in court cannot disbelieve his testimony. His ailments were obviously real and manifested itself in physical ways which prohibited him from working.

Accordingly, this Court finds as follows:

1. That the Claimant was a victim of a violent crime, as defined in Section 2(c) of the Act, to wit: "Aggravated Battery", (Ill.Rev.Stat., **1973**, Ch. **38**, Sec. **12-4**).

2. That there was no evidence of any provocation by the Claimant for the attack upon him.

3. That there was no evidence that the victim and

his assailants were related or sharing the same household.

4. That the criminal offense was promptly reported to law enforcement officials, and the Claimant has fully cooperated with their requests for assistance.

5. That the Claimant's injuries were not attributable to the Claimant's wrongful act or substantial provocation of his assailants.

6. That the Claimant has received no insurance benefits of any kind nor is he entitled to any insurance benefits of any kind as reimbursement of any of his expenses.

7. That the Claimant incurred medical and hospital expenses as follows:

Medical	\$ 326.00
Hospital	\$1,720.00
	<hr/>
Total	\$2,046.00

8. That the Claimant was unable to work during the period of February 7, 1974, to September 7, 1975, a period of 19 months, as a result of his injuries; that the sustained loss of earnings during this period is in the amount of **\$10,291.66.**

The Act provides in Section 4 as follows:

Loss of earnings, loss of future earnings, and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less.

The amount of actual loss of earnings sustained by the Claimant is more than \$500.00 per month. In accordance with Section 4 of the Act, the \$500.00 per month limit is controlling. The total compensable loss of earnings sustained by the Claimant is **\$9,500.00.**

9. That based on the aforementioned calculations, the Claimant's total pecuniary loss is as follows:

Hospital	\$ 1,720.00
Medical	326.00
Loss of Earnings	9,500.00
Total:	\$11,546.00

That after deducting \$200.00 pursuant to Section 7(d) of the Act, the Claimant's pecuniary loss is \$11,346.00.

The Claimant is therefore entitled to the maximum award under the Act which is \$10,000.00.

IT IS HEREBY ORDERED that the sum of \$10,000.00 be awarded the Claimant Peter Pippas, an innocent victim of violent crime.

IT IS FURTHER ORDERED that the sum of \$1,000.00 is reasonable considering the time invested by counsel and that therefore Lupel & Amari, attorneys for the Claimant, may charge said amount to the Claimant pursuant to Section 12 of the Act.

(No. 75-CV-152—Claimant awarded \$762.96.)

IN RE APPLICATION OF MARGUERITE ZIEMBA.

Opinion filed October 28, 1975.

THOMAS R. BOBAK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
PEGGY BASTAS, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Burden of proof. Claimant bears burden of proving that injuries were the result of a violent crime.

PER CURIAM.

Claimant seeks compensation for alleged medical and hospital expenses. She has submitted her claim pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the "Act").

The Court entered an Order on March 18, **1975**, [based on the Investigatory Report of the Attorney General, the Application and the form submitted by the Claimant] which Order found that the Claimant was not a victim of a crime as defined in the Act.

Pursuant to Section **9** of the Act, the Claimant requested a hearing.

Evidence was taken by the Court at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The Claimant testified that on March 18, **1974**, at approximately **11** o'clock p.m., she was arriving home after having been with other ladies at a cocktail lounge. As she attempted to get out of the car she was clubbed over the head and she does not remember anything thereafter until she woke up in the hospital. She was told that the police had brought her there. She suffered a broken nose and broken right arm and cuts on her left temple. Thereafter she was treated in St. Margaret's Hospital, Hammond, Indiana, and by her family doctor.

In addition to the above mentioned ailments, she received a bad sprained ankle and scraped the flesh off one of her knees.

Prior to the alleged attack she was unemployed having had a history of heart problems.

As a result of the attack her glasses were broken and her purse was missing.

On cross-examination she admitted having had one bottle of beer to drink that evening. She did not recall talking to any police, nor did she recall describing her assailant because she did not see her assailant at all. She was unconscious that entire evening and early morning and does not remember any of the events until she was in the hospital.

The Respondent called as its witness an officer of the Village of Lansing Police Department, Henry S. Roberts. The officer testified that on March **17, 1974**, the police received a call from a neighbor of the Claimant stating that the Claimant had been hurt in some way. The police received the call at **3** o'clock a.m. The weather was "dampish", having rained earlier. When the officer arrived the Claimant was in the home of the neighbor. He observed that the Claimant was muddy, had a split lip and scraps on her knees and was bleeding. The Claimant was not coherent at the time. She could not reason out exactly what happened. She said that someone was out to get her, and that she had been beaten, and described the assailant as a man in his forties, about **5'7"** tall. First she said she was getting out of the car and was attacked, and then she stated she was dragged out of the car.

The officer upon investigation found nothing at the scene of the alleged incident except spots of blood leading from the sidewalk to the neighbor's house. He could find nothing on the ground that indicated a struggle. He could find no footprints other than the footprints of the Claimant leading from the driveway to the neighbor's house. He did not find any broken glasses. He did not find any purse and interrogated the neighbor who said that the Claimant had not brought her purse into the home. The car keys were in the car.

The officer stated that the Claimant had a very strong odor of alcohol on her breath.

At 6:30 a.m. on the same day, the officer interrogated the Claimant again. The Claimant was not sure at that time if she was hit or pushed. She described her assailant as a big man with an ugly face. The officer could not find any indication of any attack having taken place. No neighbors heard any screams or saw anything. No arrests were made as a result of the incident. On cross-examination, the officer testified that when he arrived at

the neighbor's home, the Claimant was lying on the couch and was mumbling incoherently, and gave conflicting stories. He did not know if the neighbor had given the Claimant anything to drink.

The road in front of the home was an improved road, and he did not recall if the driveway upon which the car was standing was improved although admitting that if it was improved there would, of course, be no footprints to be found.

The Chief of Police of the Village of Lansing, Dean R. Stanley, testified that he became acquainted with the Claimant through numerous complaints from her residence over the years.

From the evidence the Court considers it to be clear that the Claimant was indeed the victim of a violent crime. While she gave conflicting stories to the Police Department immediately after the incident, and while she cannot remember anything of making these reports to the police, these inconsistencies are explainable by reason of the fact that the Claimant had suffered a severe blow upon the head. According to the police officer the Claimant was incoherent, or almost incoherent, at the time of his interrogation.

The fact that no neighbors heard any screams or saw any struggle does not cast doubt upon the Claimant's story whatever. Merely because a crime is not witnessed does not mean that a crime did not take place.

The lack of physical signs of a struggle is completely compatible with the Claimant's version of the incident inasmuch as no struggle took place. She was knocked unconscious without having had the opportunity of struggling.

The Claimant's story is corroborated by the fact that the police found the key to her automobile still in the

ignition. It is further corroborated by the fact that neither the police nor the neighbor saw the Claimant's purse.

The Court having had the opportunity of hearing the Claimant testify and having seen her demeanor on the witness stand, and taking into consideration all of the circumstances of the incident, must conclude that the Claimant was the victim of a violent crime as defined in Section 2(c) of the Act, to wit: "Battery", (Ill.Rev.Stat., 1973, Chap. 38, §12-3).

There was no evidence of any provocation by the Claimant for the attack upon her. The criminal offense was promptly reported to law enforcement officials and the Claimant has fully cooperated with any requests for assistance. The Claimant and her assailants were not related nor sharing the same household.

As a result of the criminal attack, the Claimant suffered various medical expenses including expenses for replacement of four pair of eye glasses. This Court concludes that the repair of one pair of eye glasses is reasonable under the provisions of the Act.

Accordingly, the hospital and medical expenses of the Claimant are as follows:

Medical and Drugs	\$ 670.87
Hospital	624.80
	<hr/>
Total	\$1,295.67

As the Claimant was unemployed at the time of the incident, she makes no claim for any lost earnings.

The Claimant received **\$332.71** from Blue Cross insurance.

In determining the amount of compensation to which a Claimant is entitled, Section 7(d) of the Act states that this Court:

(d) . . . shall deduct \$200.00 plus the amount of benefits, payments or awards, payable under Workmans Compensation Act or from local governmental, state or federal funds or from any other source . . .

That after the statutory deduction of \$200.00 plus the insurance benefits of \$332.71, the Claimant's pecuniary loss is calculated to be \$762.96.

IT IS HEREBY ORDERED that the sum of \$762.96 be awarded the Claimant, Marguerite Ziemba, an innocent victim of a violent crime.

IT IS FURTHER ORDERED that the sum of \$100.00 is reasonable considering the time invested by counsel and that therefore Thomas R. Bobak, attorney for the Claimant, may charge said amount to the Claimant pursuant to Section 12 of the Act.

(No. 75-CV-153—Claimant awarded \$10,000.00.)

IN RE APPLICATION OF ALICE JOHNSON.

Opinion filed November 19, 1976

GARY L. KAPLAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Determination* of dependency for loss of support. In order to be classified as a dependent under the Act it is not necessary for one to be totally dependent.

PER CURIAM.

This claim arises out of a crime which took place on June 5, 1974, at 233 North Mason, Chicago. The Claimant seeks compensation for funeral expenses and loss of support under the provisions of the "Crime Victims Compensation Act", Ill.Rev.Stat., 1973, Ch. 70, §71, et seq. (hereafter referred to as the "Act").

The sole issue presented to the Court is whether the Claimant was dependent on the deceased victim for her

support under the Act. The Claimant is the mother of the deceased victim.

The facts were that on June **5, 1974**, the Chicago police, responding to a call from Margaret Johnson, the estranged wife of the victim, found the body of the deceased victim, Claude Johnson, on the floor of his apartment at **233 North Mason, Chicago**, with a gunshot wound in the head. The victim was pronounced dead at Loretto Hospital.

This Court finds that the victim and his assailant were not related or sharing the same household and that the Claimant cooperated fully with law enforcement officials. No other benefits were received by the Claimant from any other sources.

The deceased victim, age **28**, had been employed by the Chicago Board of Education prior to his death, earning **\$604.48** per month.

The Claimant's testimony was that the deceased began living with her about one year prior to his death and continued to live with her until his death. During the time that the deceased lived with Claimant he gave her about **\$150.00** per month. Prior to his coming to live with her, he contributed **\$25.00** per week and for her support and had been so contributing since **1968**.

No receipts were given for this money and no records were kept by the parties.

The Claimant likewise received approximately **\$150.00** per month from her daughter, Mary Johnson. No records were kept for these payments. The Claimant was unemployed at the time of her son's death. Her husband had died about a month previous to her son's death.

At the time of her son's death, the Claimant was making monthly payments on a three flat building she owned with another son. All of the income received by

her from the co-owner of the property and a tenant of the property were used to make these monthly payments.

It is clear to this Court that the Claimant was, at least partially, dependent upon the deceased crime victim for her support. The Claimant's total monthly income, other than that which helped make her home payments, was \$300.00, of which the deceased paid approximately \$150.00. However, some part of the decedent's contribution must be attributed to his own food and utilities. It appears therefore to this Court that the \$25.00 per week contribution made by the decedent **prior** to his coming to live with his mother is an appropriate indication of his support of the Claimant.

Section 3 of the Act provides that:

A person is entitled to compensation under this Act if: (a) he is a victim as defined in Section 2 of this Act, or is a person who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim. . .

It is the opinion of this Court that in order to be classified as a dependent under Section 3 it is not necessary for one to be totally dependent. Partial dependency, such as in the case before us, is sufficient to qualify one as a dependent.

The Respondent has pointed out that the evidence at the hearing indicated that the Internal Revenue Service, after an audit, refused to allow the decedent to claim the Claimant as a dependent. However, in view of the fact that the criteria for dependency under the Internal Revenue Code is wholly different than dependency under the Act, we believe that the adverse determination by the Internal Revenue Service is not controlling here. In fact, the fact that the decedent attempted to claim his mother as a dependent is some evidence of the fact that the parties considered the Claimant to be a dependent of the deceased and reinforces the Court's conclusion of partial dependency.

This Court finds therefore that the Claimant was a dependent of the deceased victim to the extent of **\$25.00** per week.

The Claimant was 55 years old at the time of her son's death. Her life expectancy according to the life expectancy tables of the U.S. Department of Health, Education & Welfare was **22.7** years. It is, therefore, clear that the total lost support is far in excess of the **\$10,000.00** maximum awardable under the Act.

IT IS, THEREFORE, ORDERED AS FOLLOWS:

The Court, considering all of the facts in this case, believes it is to the best interest of the Claimant and the State that this award be disbursed to the Claimant in periodic monthly payments as authorized by Section 8, Subparagraph (a), Subparagraph **4** of the Act.

IT IS, THEREFORE, ORDERED that the Claimant, Alice Johnson, be awarded monthly payments of \$250.00 each, until the earlier of the following two events shall occur: the death of the Claimant or the total sum of \$10,000.00 having been paid.

This Court further finds under Section **12** of the Act and based on the petition of attorney Gary L. Kaplan that attorney's fees in the total amount of \$400.00 is reasonable for representing the Claimant at the hearing of this case.

IT IS, THEREFORE, ORDERED that Gary L. Kaplan may charge the Claimant **\$400.00** in attorneys fees.

(No. 75-CV-159—Claim dismissed.)

IN RE APPLICATION OF IRENE MILLER.

Opinion filed April 7, 1976.

IRENE MILLER, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Cooperation with law enforcement officials.

PER CURIAM.

This claim arises out of an alleged criminal offense that occurred on July 8, **1974**, at **8152 S. Kingston**, Chicago. Irene H. Miller, Claimant, seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., **1973**, Ch. **70**, Sec. **70**, **71**, et seq.) (hereafter referred to as the "Act").

On May **6, 1975**, an order was entered by the Court dismissing the claim, and upon motion of the Claimant for a hearing under Section **9** of the Act, a hearing was granted.

The Claimant testified that she had lived with and shared her household with Leon Stewart, the assailant, until the end of May, **1974**.

On July **7, 1974**, Leon Stewart came to her home, severely beat the Claimant, threatened to move back in with her and threatened her with great bodily harm if she called the police. The Claimant's daughter called the police but the Claimant ordered her daughter to cancel the police call and the daughter complied.

The next day, July **9, 1974**, the Claimant was obliged to be home from her place of employment because of the severity of the beating of the previous day. On July **9, 1974**, the assailant, Leon Stewart, again came to the Claimant's apartment. The assailant severely beat her, pushing her harshly against a wall and punching her in her face and body. In self defense she picked up a letter opener and stabbed him in his neck. Claimant then ran to a neighbor's apartment, still holding the letter opener, and called the police.

After the police arrived she told them what had occurred and surrendered the letter opener to them.

She was taken to the police station. At the station the police interrogated her in an accusatory fashion and she became terrified that she would be accused of a crime instead of Leon Stewart. Finally the police told her that Leon Stewart would not sign a complaint against her. She was so relieved that she would not be charged with the crime and that she would not go to jail that she did not think of signing a complaint against Leon Stewart. The police, however, did inform her of her right to institute a criminal complaint against Leon Stewart. Thus, neither party filed a complaint against the other.

On July 26, 1974, Leon Stewart, having recovered from his injury, again invaded her home and sexually assaulted her daughter, Tammy Harper. The assailant was indicted for indecent liberties with a child and a trial on that charge was pending at the time of the hearing on the instant case in the Court of Claims. No criminal complaint has ever been made against the assailant for the beatings of July 8th and July 9th for which this claim is brought.

As a result of the beatings of July 7th and July 8th, the Claimant who was pregnant by her assailant lost the baby and was obliged to have her uterus removed.

The Act provides in Section 3(d) that a person is entitled to compensation under this Act if:

The applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant. (underlining ours)

In the case before us it is obvious that the Claimant did not comply with Section 3(d) of the Act. By her failure to sign a criminal complaint against her assailant, she not only failed to cooperate but in fact totally blocked a prosecution.

Claimant seeks to be excused from compliance with this provision because of her own fears of being prosecuted. The Act, which this Court is obliged to follow, provides no exception for fears of the victim. Indeed, it was one of the purposes of the Act to encourage full cooperation with the authorities in the apprehension and prosecution of criminals despite possible fears in the minds of victims.

If the Claimant had set aside her own doubts and fears and signed a complaint against Leon Stewart, perhaps Leon Stewart's latter assault might have been prevented. This is the kind of preventative action the Act attempts to encourage.

This Court is cognizant of the apprehensions and fears of ordinary citizens when dealing with police in criminal matters and this Court understands how the Claimant might have thought that it would be better not to be involved further when she was told there would be no charge against her. However, Claimant's failure to further involve herself is directly contrary to not only the letter but the spirit and intent of the Act.

Therefore, this Court finds that no compensation is authorized and this claim is dismissed.

(No. 75-CV-219—Claim dismissed.)

IN RE APPLICATION OF *LERA GORDON*.

Opinion filed April 7, 1976.

LERA GORDON, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Statutory construction of Section 3(e) of the Act.*

PER CURIAM.

This claim arises out of a criminal offense which took place on December 29, 1973, at 12004 S. LaSalle Street, Chicago. The victim, Lera Gordon, seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereafter referred to as the "Act").

An order was entered by this Court on March 27, 1975, dismissing the claim and the Claimant moved for a hearing under Section 9 of the Act, and the hearing was granted.

The facts are essentially undisputed. The victim was in her car on her way home from shopping when the assailant, Thomas Gordon, Jr., entered her car and shot her twice in the abdomen. The assailant was her **estranged husband**.

The assailant was indicted for attempted murder and aggravated battery and was at the time of the hearing awaiting trial.

At the time of this brutal attack, the victim had been living separate and apart from her husband for approximately six months. The victim lived with her mother and the assailant lived in the previous marital home of the parties. The child of the parties lived with the victim, Lera Gordon, and the assailant visited the child almost every day. Neither party had, at the time of the crime, instituted any divorce proceedings. The issue presented to this Court is whether a person is entitled to compensation under the Act if that person is related to the assailant but not sharing the same household.

Section 3(e) of the Act states that:

A person is entitled to compensation under the Act if: . . . (e) the victim and his assailant were not related, and sharing the same household

The legislature, in enacting the Act, severely limited its application. Whether for budgetary or other considerations, the legislature intended to restrict application

to only certain circumstances and only under certain conditions and with limitations as to amount of compensation and items to be considered for compensation. It is our opinion, from the words of Section 3(e) of the Act, that it was the intent of the legislature to deny compensation for injuries arising out of most domestic quarrels. It did not intend that this Court enter into the morass of trying to determine provocation or causes of quarrels between relatives or persons who reside together. Statistically, crimes arising between relatives or persons residing together constitute a large percentage of the total reported violent crimes. The legislature apparently did not intend the State of Illinois to take on the financial burdens involved in compensating victims of domestic quarrels.

From a grammatical standpoint, the comma after the word related in Section 3(e) indicates that *either* a condition of being related to the assailant or a condition of sharing the household of the assailant disqualifies a person from compensation. If the legislature intended that *both* the condition of being related to the assailant and sharing the same household must be present in order to disqualify a person, then the comma would not have been required.

To hold otherwise is also to hold that the legislature intended to pay a victim who shared the household of his assailant although not related to him. This Court cannot agree that such was the intent of the Act.

Although the Court sympathizes with the Claimant in that the attack upon her caused her pecuniary loss as well as great pain and anguish, the Court is compelled to follow what in its opinion is the clear intent of the legislature.

Therefore, the Court finds that no compensation in this claim is authorized under the aforesaid Act and the claim is dismissed.

(No. 75-CV-276—Claim *dismissed*.)

IN RE APPLICATION OF ROBERTA L. STEVENS.

Opinion filed December 3, 1976.

MELVIN H. SORKIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Motor vehicle accidents and reckless conduct.

PER CURIAM.

This claim arises out of an incident which occurred on September 8, **1974**, at **3101** North Halsted, Chicago. The Claimant seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., **1973**, Ch. 70, Sec. **70**, et seq.) (hereafter referred to as the "Act").

The sole issue presented to the Court was whether the Act covers injuries arising from automobile accidents.

Evidence was taken at a hearing conducted by Martin C. Ashman, a Commissioner of this Court.

The Claimant was struck by an automobile on September 8, 1974. The Claimant was severely injured, suffering fractures of both legs, cerebral concussion, and multiple bruises and contusions.

The Respondent, State of Illinois, moved to dismiss the claim for lack of jurisdiction.

The Claimant alleges that the vehicle involved in the accident was driven in a reckless manner, that the driver had no insurance, and that she may obtain compensation under the Act by basing her claim on Chapter **38**, Section **12-5**, Illinois Revised Statutes, **1975**, entitled "Reckless Conduct".

7.11

The Act defines crimes of violence in Section 2, Subparagraph (c) as follows:

“Crime of Violence” means and includes any offense defined in Sections 9-1, 9-2, 10-1, 10-2, 11-1, 11-3, 11-4, 12-1, 12-2, 12-3, 12-4, 12-5 or 20-1 of the Criminal Code of 1961 if none of the said offenses occurred during a civil riot, insurrection or rebellion.

It is the opinion of this Court that the Illinois General Assembly did not intend to include compensation for non-intentional motor vehicle offenses. The language of Chapter 38, Section 12-5 of the Illinois Revised Statutes does not specifically mention motor vehicle accidents. If the Illinois General Assembly had intended to include motor vehicle accidents, it could have done so very easily by including under its definition of crime of violence those sections of the statutes which specifically mentioned motor vehicle offenses. The General Assembly chose not to do so.

There is only one section of the Illinois Criminal Code, being Chapter 38, which specifically mentions reckless offenses committed in a motor vehicle and that is Section 9-3 of the Criminal Code which states in part as follows:

Involuntary Manslaughter and Reckless Homicide.

(a) A person who kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which caused the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly.

(b) If the acts which caused the death consist of the driving of a motor vehicle, the person may be prosecuted for reckless homicide or if he is prosecuted for involuntary manslaughter, he may be found guilty of the included offense of reckless homicide.

The General Assembly chose not to include that section under its definition of crimes of violence.

To construe the Act as offering compensation for acts of reckless driving which result in injuries but not for acts of reckless driving which result in death is absurd. Such a conclusion would lead to absurd results. As the

Respondent points out, if two persons are hit by the same recklessly driven motor vehicle and one dies and the other lives, such a position would require the granting of compensation to the survivor of the accident but not to the family of the deceased. This Court can not interpret the statute in such a manner that the same would lead to absurd results such as this.

It is the Court's opinion that the inclusion of Section **12-5** of Chapter **38** in the definition of crimes of violence in the Act was for the purpose of including all acts of reckless conduct other than motor vehicle accidents.

Further, there is no American jurisdiction that allows compensation for nonintentional harm inflicted by motor vehicles. The Uniform Crime Victims Reparations Act which was drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association's House of Delegates on February **5**, 1974, excludes acts involving motor vehicles from compensation unless the acts were intended to cause personal injury or death. It appears to be unanimous that no state compensates victims of traffic accidents under its Crime Victims Compensation Acts.

The Appellate Court in the case of *People v. Johannsen*, 126 Ill.App.2d 31, 261 N.E.2d 551 (1970), stated:

It is the primary rule in the interpretation and construction to be placed upon a statute that the intention of the legislature should be ascertained and given effect . . . Statutes must be reasonably construed in accordance with practical application. Where two constructions of a law are proposed, this Court will avoid the one which produces absurd results and renders the law difficult of operation.

This Court adopts the reasoning of the Court in the *Johannsen* case.

The motion of the Respondent to dismiss is, therefore, sustained and this claim is hereby dismissed.

(No. 75-CV-346—Claimant awarded \$2,030.60.)

IN RE APPLICATION OF RUTH LONGSTREET SOLE.

Opinion filed November 1, 1976.

ALAN KAWITT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Determination of reasonable funeral expenses. Reasonable funeral expenses are \$2,000.00.*

SAME—*Determination of dependency for loss of support. Burden of proving dependency is on Claimant.*

PER CURIAM.

This claim arises out of a criminal offense that occurred on October 13, 1974, at 325 West 115th Street, Chicago. Ruth Longstreet Sole, mother of the deceased victim, Charles E. Longstreet, seeks compensation pursuant to the provisions of the “Crime Victims Compensation Act,” Ill.Rev.Stat., 1973, Ch. 70, 971, et seq. (hereafter referred to as the “Act”).

The sole contested issues presented to the Court were whether the burial expenses claimed were reasonable under the Act and whether the Claimant was dependent upon the deceased victim for her support.

The facts, other than those relating to the question of dependency, were undisputed. On the evening of October 13, 1974, at approximately 6:30 p.m. the victim was a patron of Smitty’s Crib #2, located at 325 West 115th Street, Chicago. He was seated at the bar when several men entered the tavern and announced a hold-up. All of the patrons were forced to lie on the floor and each patron was robbed. As the assailants were departing the tavern they began shooting and the victim who was lying at the front of the premises was shot several times. He was transported to Roseland Community Hospital where he was pronounced dead on arrival. Three men were

arrested for the murder of the victim and at the time of the hearing were awaiting trial. There is no evidence that the victim in any way provoked the attack upon himself nor is there any evidence that the victim and his assailants were related or shared the same household.

The Claimant has cooperated with law enforcement authorities to the best of her ability.

With regard to the funeral expenses, the Claimant claims as follows:

Angelus Funeral Home for funeral	\$2,394.00
Flowers purchased	350.00
Cost of inquest	30.60
Burial suit	125.00
Total:	\$2,899.60

Although the Court is reluctant to question the funeral expenses sustained by a Claimant, the Court is compelled by Section 3(a) of the Act, which states that the compensation be: “only for reasonable funeral and medical expenses for the victim”, to look at the reasonableness of the expenses. The Court has reviewed the numerous claims for funeral expenses that have been submitted and has previously ruled that it considers reasonable funeral expenses in the Chicago area to be \$2,000.00. (See claim of *Anthony Gentile*, 75-CV-117) Considering all of the relevant circumstances in the present claim, the Court finds that the reasonable funeral expenses that may be compensated for under the Act in the present claim are \$2,000.00 plus \$30.60 for inquest costs expended by the Claimant or a total of **\$2,030.60**.

With regard to the issue of dependency, the essence of the Claimant’s sometimes contradictory testimony was that, during the six months prior to his death, the deceased victim was self-employed as a painter working on various jobs and earning anywhere from \$30.00 to \$200.00 per week. The Claimant testified that the victim

contributed one-half of his earnings to her plus giving gifts of clothing at various holidays to his brothers and sisters. The Claimant admitted however that she could not name any person or company for whom her son had done any work. She doubted that he had filed any income tax returns and she made no attempt to ascertain this fact prior to the hearing. Her son owned no painting equipment—no brushes, rollers, ladders or trucks.

Her testimony regarding her son's income was totally unsubstantiated.

It should be noted that during the same period of time the Claimant was married and her husband worked full time and supported her and her large family.

Section 4 of the Act provides:

. . . loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less . . .

The burden of proof is on the Claimant to prove her dependency and to prove the income of the decedent. In view of the unsubstantiated nature of the Claimant's testimony and the fact that she had a husband working full time to support her and her family, the Court is of the opinion that the Claimant has not proved dependency by her upon the decedent by a preponderance of the evidence. This Court is further of the opinion that the Claimant has failed to prove by a preponderance of the evidence that the decedent earned any money during the six months preceding the crime.

Her claim for dependency must, therefore, be denied.

IT IS THEREFORE ORDERED that the sum of \$2,030.60 be awarded to the Claimant Ruth Longstreet Sole as a relative of a deceased victim of a violent crime.

(No. 75-CV-385—Claim dismissed.)

IN RE APPLICATION OF GENE A. GOODWIN.

Opinion filed September 8, 1976.

GENE A. GOODWIN, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Cooperation with law enforcement officials. Claimant must notify appropriate law enforcement officials as soon after the crime as is reasonably practical under the circumstances.*

PER CURIAM.

This claim arises out of a criminal offense that occurred on September **14, 1974**, at **1549** South Keeler Avenue, Chicago. Gene A. Goodwin, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., **1973**, Ch. **70**, Sec. **70, 71**, et seq.) (hereafter referred to as the “Act”).

On July **15, 1975**, this Court filed an opinion dismissing the claim and thereafter on motion of the Claimant a hearing was granted by the Court under Section **9** of the Act.

The issue presented to this Court is whether the Claimant’s delay in reporting the crime to the police was reasonably practical under the circumstances.

The facts as testified to by the Claimant were that the Claimant, while walking home at **1549** South Keeler, Chicago, was accosted by a man with a rifle who demanded Claimant’s money. The Claimant handed the assailant his money which amounted to **\$7.00**. The assailant then fired a shot, turned around, and walked away.

The Claimant felt no pain. He raised his clothes and felt and looked for blood, but saw none. The Claimant then went home, arriving about **10** o’clock p.m. and went to bed.

The Claimant woke up the following afternoon at about 1 o'clock p.m. on September 15, 1974, with severe stomachpain. He took Alka Seltzer and Bromo Seltzer to ease the pain. His stomach then began swelling. He still did not realize what was wrong with himself. He found no bullet hole or blood on his stomach, but did see a minor scratch which he assumed occurred on his job which was loading trucks.

At about 12:45 a.m. on September 16, 1974, the pain became unbearable and the Claimant went to the hospital where it was discovered that the Claimant had a 22 caliber bullet in his stomach. The police were notified at the hospital.

Claimant initially failed to report the theft of his \$7.00 because, he stated, in the black ghetto where he lives thefts of small amounts of money were common and because of their frequency were rarely reported. However, as soon as the Claimant discovered that he had been shot, the police were notified—some 26 hours after the crime.

The assailant was never apprehended.

Section 3 of the Act provides:

A person is entitled to compensation under the Act if. . . (c) the appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim as soon after its perpetration as was reasonably practicable under the circumstances . . .

This Court has frequently stated that one of the obvious objects of the Act is to encourage prompt notification of crimes to law enforcement officials and full cooperation with law enforcement officials.

Because of the fact that the assailant in this case was carrying a rifle, it is apparent that an immediate notification of the crime to the police might have resulted in the apprehension of the criminal. Notification 26 hours later greatly prejudiced possibility of apprehension of the assailant.

We do not doubt Claimant's testimony that in a high crime area minor thefts go unreported, but it is precisely this situation that the Act seeks to remedy by offering compensation to those who do report crimes. Conversely, those persons who do not promptly report crimes cannot expect compensation under the Act.

This Court finds, therefore, that the Claimant failed to notify appropriate law enforcement officials as soon after the perpetration of the crime as was reasonably practical under the circumstances and is not eligible for compensation under the Act.

This claim is, therefore, dismissed.

(No. 75-CV-394 and 76-CV-504, Consolidated — Claimants awarded \$10,000.00.)

IN RE APPLICATION OF SUSAN PETERSON.

AND

IN RE APPLICATION OF ERNEST AND EDNA PETERSON.

Opinion filed April 21, 1977.

JOHN D. GOTTLICK, Attorney for Susan Peterson.

RON BLAIR, Attorney for Ernest and Edna Peterson.

WILLIAM J. SCOTT, Attorney General of Illinois;
KENNETH G. MASON, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Distribution of proceeds.

PER CURIAM.

This claim arises out of a criminal offense that occurred on November 6, 1974, at 8121 South Racine Avenue, Chicago, Illinois. Claimants in these consolidated actions seek compensation pursuant to the provisions of the "Crime Victims Compensation Act," Ill.Rev.Stat., 1973, Ch. 70, Section 71, et seq. (hereinafter referred to as the "Act").

The sole contested issue presented to the Court is to determine the identities of those entitled to compensation under the Act.

The facts, other than those relating to the issue of those entitled to compensation, are undisputed. It appears that on November 6, 1974, Roy S. Peterson, the crime victim, was found shot to death at the Circle Chevrolet car lot, 8121 South Racine Avenue, Chicago, Illinois. It appears that he leased guard dogs to Circle Chevrolet and was apparently making a security check on the lot when he was shot by a robber.

There is no evidence that the victim and his assailant were related or shared the same household.

Claimants have cooperated fully with law enforcement authorities to the best of their abilities.

As to the issue of who is entitled to benefits under the Act, it appears that Roy S. Peterson, the victim, married Karen D. Peterson on June 19, 1965. Two children were born of this marriage, namely, Lisa K. Peterson and Christian L. Peterson. This marriage was dissolved by divorce on April 12, 1969. This wife is remarried and her name is presently Karen D. Vitale.

On April 16, 1969, the victim was married to Marilyn A. Peterson. One child, namely Roy S. Peterson, Jr., was born of this marriage. This marriage was dissolved by divorce on July 19, 1974. Marilyn A. Peterson has not remarried.

On September 19, 1974, Roy S. Peterson was married to one Susan Gembara in Mexico. Susan Gembara received a Mexican divorce from her then husband on that same day. She was pregnant at the time of the marriage, and a son named Kristi Roy Peterson was born to her on February 9, 1975, after the crime victim's death on November 6, 1974. A copy of the birth certificate of Kristi Roy Peterson was introduced into evidence.

The victim's father and mother, Ernest and Edna Peterson, paid the sum of **\$1,904.30** for the funeral of decedent. A claim for this amount is presented to the Court of Claims under the consolidated claim entitled, *Ernest and Edna Peterson vs. State of Illinois*, No. **76-CV-504**. A copy of the paid funeral bill was introduced into evidence.

From the evidence introduced at the hearing herein, the Court finds that the sum of \$10,000, the maximum award allowable under the Act, should be entered in this cause.

The Court further finds that the Mexican divorce of the crime victim's third wife and her subsequent marriage to the crime victim in Mexico were valid and recognized under Illinois law.

The Court further finds that the award herein should be allocated as follows:

1. To Ernest and Edna Peterson, parents of the crime victim, the sum of One Thousand Nine Hundred Four and **30/100 (\$1,904.30)** Dollars, as reimbursement for the payment of the funeral bill for the deceased.
2. To Susan Peterson, the widow of the deceased, one-third ($\frac{1}{3}$) of the award herein, less the amount of the award to Ernest and Edna Peterson, and less attorney's fees, as hereinafter set forth.
3. To Lisa Peterson, a minor, child of Karen Peterson Vitale (Wife No. 1), one-fourth ($\frac{1}{4}$) of two-thirds ($\frac{2}{3}$) of the remaining sum of Five Thousand Three Hundred Ninety-Seven and **14/100 (\$5,397.14)** Dollars, or One Thousand Three Hundred Forty-Nine and **28/100 (\$1,349.28)** Dollars.
4. To Christian Peterson, a minor, child of Karen Peterson Vitale (Wife No. 1), one-fourth ($\frac{1}{4}$) of two-thirds ($\frac{2}{3}$) of the remaining sum of Five Thousand Three Hundred Ninety-Seven and **14/100 (\$5,397.14)** Dollars, or One Thousand Three Hundred Forty-Nine and **28/100 (\$1,349.28)** Dollars.
5. To Roy S. Peterson, Jr., a minor, child of Marilyn A. Peterson (Wife No. 2), one-fourth ($\frac{1}{4}$) of two-thirds ($\frac{2}{3}$) of the remaining sum of Five Thousand Three Hundred Ninety-Seven and **14/100 (\$5,397.14)** Dollars, or One Thousand Three Hundred Forty-Nine and **28/100 (\$1,349.28)** Dollars.
6. To Kristi Roy Peterson, a minor, child of Susan Peterson (Wife No. 3), one-fourth ($\frac{1}{4}$) of two-thirds ($\frac{2}{3}$) of the remaining sum of Five Thousand Three Hundred Ninety-Seven and **14/100 (\$5,397.14)** Dollars, or One Thousand Three Hundred Forty-Nine and **28/100 (\$1,349.28)** Dollars.

3. That the Claimant's alleged physical injuries of contracting influenza from the assailant and extraction of teeth six months after the crime because of nervousness are remote and speculative. Therefore, no compensation can be awarded for the losses under the Act.

4. That loss of personal effects is not compensable under the Act and therefore no compensation can be awarded for the Claimant's loss of her purse and its contents.

5. That the Claimant has no loss which is compensable under the Act.

IT IS HEREBY ORDERED that no award be made to the Claimant because she has suffered no loss which is compensable under the Crime Victims Compensation Act.

(No. 75-CV-550—Claim denied.)

IN RE APPLICATION OF JACOB R. ARMSTEAD, FATHER OF
CLARENCE H. ARMSTEAD.

Opinion filed August 6, 1976.

JACOB R. ARMSTEAD, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois;
LEONARD CAHNMANN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Determination of dependency for loss of support.*

PER CURIAM.

The claim herein arises out of the death of Clarence Armstead, 28, who died on April 9, 1974, as a result of bullet wounds sustained on that day, at 7701 South Racine, Chicago, Illinois.

This claim was filed pursuant to the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 71, et seq.) (hereafter referred to as the "Act").

Claimant, Jacob Armstead, father of the victim, makes claim as a dependent for alleged loss of support.

The facts of the incident were that the victim, Clarence Armstead, on April **5, 1974**, was accosted by an unknown man after dropping off his car at the garage at **7701** South Racine, Chicago, Illinois. The offender displayed a hand gun and demanded the victim's wallet. The victim handed over the wallet but tried to take the gun away from the offender. The offender then shot the victim and the victim expired on April **9, 1974**, as a result of the gun shot wound. The Claimant, Jacob R. Armstead, claims loss of support and funeral expense. He was the father of the victim.

The Claimant, who is **62** years of age, stated that he, his wife, Gladys Armstead, age 57 years, and a **17** year old child, Myra, were dependent on the assistance of their son, Clarence H., the deceased victim. Jacob Armstead, the Claimant, has not filed an income tax return since **1971** because he has allegedly not earned enough money to so warrant. The Claimant states that the victim, Clarence H. Armstead, dropped off groceries, bought clothes and made mortgage payments for the family. There is no evidence other than the testimony of the Armstead family.

The victim, Clarence H. Armstead, was employed, at the time of his death, by the U.S. Post Office, wherein in **1973** he earned **\$7,678.32** net less government pension deductions. The victim was denied the status of head of household for **1973**. The victim was allowed only **1** personal exemption for himself in **1973**.

The Claimant incurred burial expenses in the following amounts:

Lena Taylor Bryant Funeral Home (funeral)
1134-36 West 87th Street
Chicago, Illinois

\$2,520.00

A. O. Norrander Co. (Marker)
 11432 South Fairfield Avenue
 Chicago, Illinois

227.53

Total Funeral\$2,747.53

The assailant in this case has neither been identified nor apprehended.

The Claimant and the victim cooperated fully with the police investigation of the shooting.

There is no evidence to indicate that the victim and his assailant were related or shared the same household.

There is no evidence indicating that the death of the victim was substantially attributable to his wrongful act or his substantial provocation of his assailant.

All documents were timely filed.

The Claimant's wife, Gladys Armstead, received \$26,000.00 on a double indemnity life insurance policy #1700 G, which was issued by Federal Employees Group Life Insurance, 4 East 24th Street, New York, New York.

On direct and cross examination, the victim's father could not ascertain or give any figure for the amount of assistance he was receiving from the victim. It was learned also that the victim leased his own apartment and owned an automobile, indicating the victim had substantial expenses. The victim was one of 11 children. The other children also contributed on occasions to the Claimant's support.

At the time of the victim's death, the Claimant's wife owned the premises in which the Claimants lived.

The Claimant admits receiving money from a moving business which he owns but could not state how much. He also is a pastor in his church and receives some unascertainable benefits from this source. He operated a used clothing store at the same location but denied any

gain. He stated all records from the moving and clothing business were burned in a fire.

The Act provides in Section 3 that:

A person is entitled to compensation under this Act if:

(a) he . . . is a person who was dependent on a deceased victim of a crime of violence for his support at the time of the death of that victim.

The Act contains no further definitions of a dependent.

Principles applicable to the factual situation presented here have been thoroughly explored by the Supreme Court of Illinois in construing the words "partially dependent" in the Illinois Workmen's Compensation Act. In *Roseberry v. Industrial Commission*, 33 Ill.2d 520, 211 N.E.2d 702, the Court said that:

A child contributes to the support of his parents within the meaning of the Act when he contributes a substantial ~~sum~~ to the support of the family although this sum is less than the actual cost of his support and maintenance where the child is a minor or in a position to demand legal support from his parents. . . . The test is whether the contributions were relied upon by the applicant for her means of living judging by her position in life, and whether she was to a substantial degree supported by the employee at the time of the latter's death.

The facts of the *Roseberry* case were that the deceased, a 19 year old bachelor, was irregularly employed for the year prior to his injuries and subsequent death and that for the 13 months prior to his injury his total net earnings were approximately \$830.00 or approximately \$65.00 per month. His mother who was the Claimant earned \$3,900.00 for the previous 12 months. The deceased employee would cash his pay checks and give his mother the cash and the mother would give him what he needed. She kept no records of what she gave him.

The Court in the *Roseberry* case concluded that the Industrial Commission was justified in finding a lack of partial dependency.

The rules of law enumerated are supported by a line of cases including: *Air Castle v. Industrial Commission*,

394 Ill. 62, 67 N.E.2d 177; *General Constr. Co. us. Industrial Commission*, 314 Ill. 58, 145 N.E.2d 90; *Bauer & Black us. Industrial Commission*, 322 Ill. 165, 152 N.E. 590; and *General Constr. Co. u. Industrial Commission*, 314 Ill. 58, 145 N.E. 90.

It is apparent in this case the degree of support that the Claimant received from the victim is not ascertainable nor substantial and therefore does not meet the test of the rules of law pertaining to dependency.

This Court while sympathizing with Claimant's loss, finds that the Claimant, Jacob R. Armstead, was not a dependent of a victim of a crime as defined in the Act and his claim is hereby denied.

(No. 75-CV-656—Claim denied.)

IN RE APPLICATION OF EDGAR LEE WALLER.

Opinion filed April 4, 1977.

MARK PETTIT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL C. WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Cooperation with law enforcement officials.*

SAME—Compensable loss of earnings. Where Claimant was unemployed at time of crime and there was no indication he had any job prospect in the immediate future, he is ineligible for compensation based on loss of earnings.

PER CURIAM.

This claim arises out of a criminal offense which occurred on March 29, 1974, at the Jazzie Ball Recreation Hall, 5109 S. Prairie Avenue, Chicago. The Claimant seeks compensation under the provisions of the Crime Victims Compensation Act, (Ill.Rev.Stat., 1973, Ch. 70, Sec. 70, 71, et seq.) (hereinafter referred to as the "Act").

The Court of Claims entered an order on September

16, 1975, dismissing this claim. Pursuant to Section **9** of the Act, the Claimant moved for a hearing and the request was granted.

The issues presented to the Court is whether the Claimant cooperated fully with law enforcement officials in the apprehension and prosecution of his assailant and whether the Claimant established any compensable loss of earnings.

Claimant testified that he was shot by an unknown person on March **29, 1974**, while in a pool room known as the Jazzie Ball Recreation Hall. Claimant was transported to Provident Hospital and then to the Cook County Hospital.

He was at Cook County Hospital **for six** weeks and from there went to the Rehabilitation Institute of Chicago.

During the time that he was in the Cook County Hospital an operation was required upon him. The police department came to the hospital the next day after the operation when the Claimant was in severe pain. The Claimant was unable to allow himself to be interviewed because of his pain. The police never interviewed him at the hospital again.

After his release from the hospital, the Claimant went to the police station and looked at various photographs for the purpose of attempting an identification. Claimant returned to the police station several times for this purpose.

From the above facts, which were undisputed by the State, it is clear that the Claimant did in fact cooperate fully with the police.

However, the testimony was that at the time of the incident Claimant was not employed. He had last been employed on February 2, 1974, almost two months prior

to the assault upon him. At the time of the assault, Claimant was receiving public aid. During the time of Claimant's physical infirmities he continued to receive the same sum from the Illinois Department of Public Aid that he had been receiving prior to the criminal assault upon him.

Section 4 of the Act provides:

Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes, in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less

This Court has previously held, in the case of *Wayne Bass vs. State of Illinois*, 74-CV-15 (1976), that a Claimant who was not employed at the time of the assault, but in fact had already made arrangements for a job and was prevented from beginning the job by reason of an assault upon him, was entitled to compensation for lost earnings.

However, in the case before us, there is no indication that Claimant had any job prospect in the immediate future. He was receiving public aid. The public aid continued in the same amount as the Claimant was receiving prior to the assault upon him. His previous employment record was one of occasional jobs. He received public aid in 1973 and 1972 for the full years.

Accordingly, this Court is of the opinion that the Claimant is not entitled to any compensation for lost earnings.

Inasmuch as Claimant's other expenses, both medical and hospital, have been fully paid by the Illinois Department of Public Aid, the Court finds that no compensation in this claim is authorized under the Act.

Accordingly, this matter is closed.

(No. 75-CV-664—Claim denied.)

IN RE APPLICATION OF VINCENT J. LEONE.

Opinion filed April 13, 1977

VINCENT J. LEONE, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; PAUL WEST, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Cooperation with law enforcement officials.* Where Claimant told police he did not wish to prosecute his assailant an award was denied for failure to cooperate with law enforcement officials.

PER CURIAM.

This claim arises out of an alleged criminal offense that occurred on December 2, 1974, at approximately 12:00 noon, at or near the corner of 79th Street and Harlem Avenue, Chicago, Illinois. Vincent J. Leone, victim, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," Ill.Rev.Stat., 1973, Ch. 70, Sec. 71, et seq. (Hereafter referred to as the "Act." Evidence was taken by the Court at a hearing conducted by J. Barry Fisher, a Commissioner of this Court.

This Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Court and a report of the Attorney General of the State of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted before the Court, the Court finds:

1. That the Claimant, Vincent J. Leone, age 32, allegedly was the victim of a violent crime as defined in Sec. 2(c) of the Act, to wit: "Battery," Ill.Rev.Stat., 1973, Ch. 38, Sec. 12-3.

2. That on December 2, 1974, at approximately 12:00 noon, the Claimant was driving his automobile

westbound on 79th Street when he unintentionally "cut-off" a truck. When the Claimant stopped for a red light at 79th Street and Harlem, the driver of the truck approached him and an argument began after the Claimant apologized. The driver of the truck then hit the Claimant in the mouth with his fist.

3. That the Claimant reported the incident to the police at approximately 4:00 on December 3, 1974. The Claimant was unable to furnish the police with any information as to the identity of his assailant or the make, color, year, or license number of the truck other than the truck was the type to transport gasoline. The Claimant stated to the police that he did not wish to prosecute.

4. That the Claimant incurred damage to his teeth as result of the incident and was treated by Gerald M. Ascherman, D.D.S.

5. That, according to Sec. 3(d) of the Crime Victims Compensation Act, Ill.Rev.Stat., 1973, Ch. 70, Sec. 73(d), a person is entitled to compensation if:

(d) the applicant has cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant.

6. That the Claimant did not comply with Sec. 3(d) of the Act by advising the law enforcement officials that he would not proceed with prosecution if the assailant were found.

It is therefore the finding of this Court that the Claimant has failed to meet a required condition precedent to his right to compensation under the Act.

Therefore, this Court finds that no compensation in this claim is authorized under the aforesaid Act, Accordingly, this claim is hereby denied.

(No. 75-CV-669—Claimant awarded \$10,000.00.)

IN RE APPLICATION OF PAUL MOY.

Opinion filed December 3, 1976.

VICTOR **SOTOS**, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General of Illinois;
JAMES O. STOLA, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—~~Loss of earnings and permanent disability.~~ Computation where Claimant was employed by family owned business and drew no salary as such.

PER CURIAM.

This claim arises out of a criminal offense which occurred on December **11, 1974**, at **1435** East Hyde Park, Chicago. The Claimant, Paul Moy, seeks compensation for lost earnings pursuant to the Crime Victims Compensation Act, (Ill.Rev.Stat., **1973**, Ch. **70**, Sec. **71**, et seq.) (hereafter referred to as the “Act”).

Evidence was taken at a hearing conducted by Martin C. Ashman, a Commissioner of this court.

The sole contested issue presented to the Court was the basis for computing the Claimant’s loss of earnings and future loss of income.

The facts were essentially undisputed. On December **11, 1974**, at approximately **9:20 p.m.**, the Claimant was in the Lung Hing Restaurant at **1435** East Hyde Park, Chicago, where he was employed as a busboy and kitchen helper. Two armed men entered the restaurant and attempted an armed robbery. One of the men, holding a gun, fired two shots at the Claimant and the Claimant fell to the floor. The police were summoned and the Claimant was taken to Billings Hospital in Chicago. The Claimant was treated and the result of the treatment was that a bullet which entered the Claimant’s side passed through a lung and lodged near his spine.

As a result of this injury, the Claimant became a paraplegic. He uses a brace on his left leg and a cane in order to walk. He walks slowly and painfully. Certain parts of his legs are numb and he has no control over the muscles of his legs at various times. After 15 minutes of sitting, he has pain in his right leg and must lie down for one-half hour to an hour. He cannot stand more than 15 minutes at a time.

The medical report entered into evidence by agreement indicated that his condition of paralysis is permanent.

While there has been no apprehension of the criminals, it is clear and this Court finds that the Claimant has cooperated with law enforcement authorities to the best of his ability. There is no evidence that the victim in any way provoked the attack upon himself nor is there any evidence that the victim and his assailants were related or shared the same household.

The victim sustained medical and hospital bills amounting to **\$25,704.46**, all of which was paid by the Cook County Department of Public Aid.

Prior to the assault upon him, the Claimant worked for his father at the Lung Hing Restaurant as a waiter, cashier, busboy, dishwasher, and general cleanup man. He has no other work training or experience. It is clear to this Court that, given the permanency of his condition, the Claimant can no longer be gainfully employed. The Claimant was aged 20 at the time of the assault upon him.

There is no question that the Claimant is entitled, under the Act, to payment for his lost future earnings. The difficulty is that the Claimant was employed in a family owned restaurant and drew no salary as such, but was paid for his living expenses, clothing, room and board. In addition he received an allowance of between

\$5.00 and \$10.00 per week plus tips in the amount of \$7.00 per day for a six day week.

Even without considering the value of the living expenses, clothing, room and board, it is apparent that the Claimant received in actual money the sum of approximately \$47.00 per week.

Taking into consideration the Claimant's age of 20 years and his normal life expectancy, it is clear that the total lost support is far in excess of the \$10,000.00 maximum awardable under the Act. It is the Court's opinion, however, that the best interests of the victim would be served by our ordering that this award be disbursed to the Claimant in periodic monthly payments as authorized by Section 8(a), Subparagraph 4 of the Act.

IT IS THEREFORE ORDERED that the total sum of \$10,000.00 be awarded to the Claimant and that the aforesaid award be paid to the Claimant, Paul Moy, in 20 equal installments of \$500.00 each.

The Court further finds under Section 12 of the Act and based on the allegations of attorney, Victor Sotos, that attorneys fees in the total sum of \$500.00 are reasonable for representing the Claimant at the hearing of this case.

IT IS THEREFORE ORDERED that Victor H. Sotos may charge the Claimant \$500.00 in attorneys fees.

(No 75-CV-787 — Claim denied.)

IN RE APPLICATION OF THEOPHILUS SANDERS.

Opinion filed March 7, 1977.

THEOPHILUS SANDERS, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois; GARY D. ABRAMS, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—Cooperation with law enforcement officials...Claimant did not comply with Section 3(c) of the Act by failing to report the crime to police but choosing instead to pursue his assailant into a public place with a weapon.

PER CURIAM.

This claim arises out of an alleged criminal offense that occurred on December **30, 1974**, at approximately **3:40 p.m.**, at **639** West 59th Street, Chicago, Illinois. Theophilus Sanders, victim, seeks compensation pursuant to the provisions of "Crime Victims Compensation Act," Ill.Rev.Stat., **1973**, Ch. 70, §71, et seq. (hereinafter referred to as the "Act").

Evidence in this cause was taken at a hearing conducted by Joseph P. Griffin, a Commissioner of this Court, following Claimant's objection to the decision of the Court of Claims denying recovery to Claimant. This Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Court, and a report of the Attorney General of the State of Illinois which substantiates matters set forth in the application, and the evidence introduced at the aforesaid hearing. Based upon these documents and evidence, the Court finds:

1. That the Claimant, Theophilus Sanders, age **38**, allegedly was the victim of a violent crime as defined in §2(c) of the Act, to wit: "Battery," Ill.Rev.Stat., **1973**, Ch. 38, § 12-3.

2. That on December **30, 1974**, at approximately **3:40 p.m.**, the Claimant and his brother-in-law were engaged in an argument at **639** West 59th Street, the Claimant's apartment. According to the police investigation report, during this argument the Claimant's brother-in-law, Brooks Tate, age **24**, of **5651** South Halsted, stabbed the Claimant in the back and side.

3. That the police report further indicates that the

Claimant then took his pistol and chased his brother-in-law. Thinking that his brother-in-law ran into a tavern, the Claimant entered the tavern with a gun in his hand, whereupon tavern patrons, suspecting a robbery, called the police. When police arrived, they transported the Claimant to St. Bernard Hospital. A warrant was later issued for the offender, Brooks Tate, who was arrested on January 17, 1975, and charged with battery. In April, 1975, he was convicted and sentenced to 1 week in Cook County Jail.

4. That the Claimant incurred medical expenses, but it appears from the evidence introduced at the hearing that the bills were paid by Claimant's insurance company.

5. That Claimant was off work as a result of his injury for a period of 67 days, during which period his employer paid him the sum of \$1,160.29. Claimant's claim for lost wages under the Act amounts to \$1,067.00, and it therefore appears that he was reimbursed by his employer in an amount greater than his claim.

6. That according to §3(c) of the Crime Victims Compensation, Ill.Rev.Stat., 1973, Ch. 70, §73(c), a person is entitled to compensation if:

. . . the appropriate law enforcement officials were notified of the perpetration of the crime allegedly causing the death or injury to the victim as soon after its perpetration as was reasonably practicable under the circumstances;

7. That the Claimant did not comply with §3(c) of the Act by failing to report the crime to police but choosing instead to pursue his assailant into a public place with a weapon in hand.

8. That pursuant to §3(e) of the Crime Victims Compensation Act, Ill.Rev.Stat., 1973, Ch. 70, §73(e), a person is entitled to compensation if:

. . . the victim and his assailant were not related and sharing the same household.

9. That the Claimant does not comply with §3(e) of the Act in that he is related to his assailant (brother-in-law) and further there is evidence to indicate that the argument resulting in the Claimant's injury was over the use of the Claimant's household by the assailant.

10. That it appears from the evidence that the Claimant was not without a wrongful act or substantial provocation of his assailant, pursuant to §3(f) of the Act.

It is therefore the finding of this Court that the Claimant has failed to meet required conditions precedent to his right to compensation under the Act, and that, in any event, Claimant has not suffered a loss compensable under the Act.

Therefore, this Court finds that no compensation in this claim is authorized under the aforesaid Act. Accordingly, this claim is hereby denied.

(No. 75-CV-799—Claim denied.)

IN RE APPLICATION OF ALICE TAYLOR CLARK, MOTHER OF MARY CORNELIA CLARK, A MINOR.

Opinion filed December 2, 1976.

ALICE TAYLOR CLARK, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois;
ROBERT DOBRITCHANIN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Dismissal for want of prosecution.*

PER CURIAM.

This cause having been set for hearing before the Commissioner of the Court of Claims, the Court finds:

1. That on June 1, 1976, an Order was entered by the Court of Claims denying the claim of Alice Taylor Clark, mother of Mary Cornelia Clark, victim (minor), for reimbursement under the Illinois Crime Victims Compensation Act, (Ill.Rev.Stat., 1975, Ch. 70, Pars. 71, et seq.).

2. That a hearing was set for October **13, 1976**, at Claimant's request.

3. That Claimant failed to appear for the hearing on October **13, 1976**.

WHEREFORE IT IS SO ORDERED:

1. That, for failure to appear and substantiate, Claimant's application for benefits under the Crime Victims Compensation Act is hereby denied;

2. That the Order of the Court of Claims of the State of Illinois hereby stands as final judgment in this case.

(No. 75-CV-836—Claimant awarded \$86.08.)

IN RE APPLICATION OF FRANK J. REZNAR.

Opinion filed May 11, 1977.

FRANK J. REZNAR, Pro Se.

WILLIAM J. SCOTT, Attorney General of Illinois;
BEATRICE HEVERAN, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT—*Wrongful act or substantial prouocation.*

PER CURIAM.

This claim arises out a criminal offense that occurred January **4, 1975**, at 55th and Lawndale, Chicago, Illinois. Frank R. Reznar, the victim, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," (Ill.Rev.Stat., Ch. **70**, Pars. **71**, et seq.), hereinafter "the Act."

This Court has carefully considered the application for benefits submitted on the form prescribed by the Court, the report of the Attorney General, and the testimony taken on February 28, **1977**, before the Commissioner to whom the case was assigned hearing. Based upon the foregoing, the Court finds:

1. That the Claimant, Frank Reznar, age **32**, was a victim of a violent crime, as defined in 2(c) of the Act, to wit: "Aggravated Battery," as defined by Ill.Rev.Stat., **1973, Ch. 38, 12-4.**

2. That on January **4, 1975**, at approximately **3:00** a.m., while driving on Lawndale Avenue in the City of Chicago, Illinois, Claimant was "tailgated" for several blocks by another car. When Claimant reached the intersection of Lawndale and 55th Street, the traffic signal was red and he stopped. The driver of the other vehicle pulled around Claimant's car at a diagonal, making it impossible **for** Claimant to proceed. Claimant got out of his car and said to the driver of the other car, "What is the matter with you, are you crazy or something?" Thereupon the driver of the other car and two passengers in the rear seat got out of the car and beat Claimant with hockey sticks and karate equipment.

3. That the act of Claimant in getting out of his car and addressing the driver of the other vehicle as he did was not "substantial provocation of his assailant" within the meaning of the Act.

4. That Claimant was taken to Holy Cross Hospital in Chicago, Illinois, for emergency treatment and lost two weeks of work.

5. Claimant reported the incident to the police, but his assailants have never been apprehended.

6. That Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

7. That the Claimant seeks compensation for medical expenses and for loss of earnings.

8. That the sole medical expense incurred by Claimant without reimbursement therefor is the following:

This course was heard before the Honorable Joseph P. Griffin, a Commissioner of this Court, following Claimant's objection to the opinion heretofore entered by this Court on July 6, 1974 denying the application for compensation. The sole contested issue presented to the Court is whether the conduct of the Claimant in giving chase to his assailants constituted "wrongful conduct" within the meaning of Section 3(f) of the Act.

It appears from the evidence introduced at the aforesaid hearing that on May 3, 1975, at about 2:00 a.m., Claimant was a passenger in an automobile being driven by one Donald Walsh. At approximately 74th Street and Southwest Highway certain youths in an automobile threw empty beer cans at the vehicle in which Claimant was riding. The driver of the automobile in which Claimant was riding, Donald Walsh, testified that he followed the offenders' car to 94th Street and Sawyer Avenue, a distance of over two miles, for the purpose of obtaining their license number which he intended to give to the police department. He pulled up to the rear of the offending car when another car pulled in back of him sandwiching his car in between the two vehicles. From seven to nine youths emerged from the two vehicles and proceeded to beat Donald Walsh and the Claimant.

Claimant, William D. McNamara, called as witness, testified that he was hit and knocked to the street, and that he sustained an injury to his leg which later was determined to be a fracture.

The Court feels that Claimant, as a passenger in an automobile having no control over the driver, was not involved in a chase. The Court feels that the evidence introduced at the hearing does not show that the Claimant, William D. McNamara, was engaged in any wrongful act which contributed to his injury.

Claimant seeks compensation for the time he lost from work. His hospital bills and any other expenses were paid for by his union's insurance carrier. It has been determined that Claimant was off work fifteen (15) weeks. On the basis of the computation at \$500.00 per month as per statute, the full amount he is entitled to recover is \$1,875.00. Claimant received from his union the sum of \$100.00 per week for a total of \$1,500.00. The statutory deduction added to this provides a deduction of \$1,700.00, so that the full amount to which Claimant is entitled is \$175.00.

Claimant is therefore awarded the sum of \$175.00.

Claimant has filed suit against William J. Pisano, the driver of the second vehicle involved in this matter, and this suit is presently pending in the Circuit Court of Cook County, No. 75 L **12304**. The Respondent, State of Illinois, is subrogated in the amount of \$175.00 against any recovery in said suit.

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